राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 12 मार्च, 2025 / 21 फाल्गुन, 1946

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Dated the 9th December, 2024

No: LEP-E/1/2024, 2024.— In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of

awards of the following cases announced by the **Presiding Judge, Labour Court-*cum*-Industrial Tribunal, Dharamshala,** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette:—**

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	95/19	Jagdish Chand	S.D.O. Civil Salooni	30.08.2024
2.	47/20	Satto Biwi @ Satto Devi	D.M.H.P. State Forest Co. D.Shala.	31.08.2024
3.	91/15	Jang Bahadur	E.E.HPPWD, Salooni	31.08.2024
4.	81/19	Ravi	Principal DAV Pub. School Gohju.	31.08.2024
5.	61/17	Raksha Devi	Principal, DAV School	31.08.2024
6.	123/19	Kashmir Singh	SEE, HPSEBL, Sunder Nagar.	31.08.2024
7.	100/19	Narayan Singh	-do-	-do-
8.	101/19	Arjun Singh	-do-	-do-
9.	102/19	Ghanshyam	-do-	-do-
10.	11/19	Subhash Chand	M.D. M/S Surie Polex	31.08.2024
11.	12/19	Raj Kumar	-do-	-do-
12.	13/19	Bhagat Ram	-do-	-do-
13.	113/18	Bhupinder Singh	-do-	31.08.2024

By order,

PRIYANKA BASU INGTY, IAS
Secretary (Lab. Emp. & O.P.).

———————

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :95/2019
Date of Institution : 29.8.2019
Date of Decision : 30.8.2024

Shri Jagdish Chand s/o Late Shri Bheelo Ram, r/o Village Guthan, P.O. Salooni, Tehsil Salooni, District Chamba, H.P. ...*Petitioner.*

Versus

The Sub Divisional Officer (Civil) Salooni, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For Respondent : Sh. Gaurav Keshav, Ld. ADA

AWARD

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner:

> "Whether termination of services of Shri Jagdish Chand s/o Late Shri Bheelo Ram, r/o Village Guthan, P.O. Salooni, Tehsil Salooni, District Chamba, H.P. *w.e.f.* 08-05-2016 by the Sub Divisional Officer (Civil), Salooni, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 and retaining juniors (as alleged by workman), is legal and justified? If not, what amount of back wages, seniority, past service benefits, and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner was engaged as a driver by the respondent on daily wage basis at Division Salooni from 24th March, 2015 to 7th May, 2016. It is alleged that on 8.5.2016 the services of petitioner were orally terminated by respondent. The petitioner has alleged that he is poor man and no source of income and after termination of his services he approached the respondent many times requesting them to re-engage him. The respondent department did not pay any heed for the request raised by the petitioner. It is alleged that the services of petitioner were terminated without issuing one month notice indicating the reason for retrenchment. No inquiry was ever conducted nor compensation was paid to the petitioner at the time of his termination. The petitioner has alleged that non compliance of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It is further alleged that after the unlawful termination of the petitioner person junior to the petitioner were retained in service continuously. Thus the action on the part of the respondent was totally a violation of the principle of 'last come first go' as embodied under Section 25-G of the Act. It is alleged that one Chander Kumar s/o Prakash Singh, r/o Village Koh, P.O. Barour Tehsil and District Chamba, H.P. was engaged after the termination of the petitioner and he was not given any opportunity for re-employment. Thus the conduct of the respondent is alleged to be violative of mandatory provisions contained in Sections 25-F, 25-G and 25-H of the Act. It is further alleged that respondent department gave fictional breaks to the petitioner and his services were finally terminated on 7.5.2016. The petitioner remained unemployed since the date of his illegal termination thus the petitioner has prayed for a relief to the effect that the oral order of termination/retrenchment of the services of the petitioner by the respondent department dated 8.5.2016 may be set aside. The petitioner may be reinstated in his services *w.e.f.* 8.5.2016 along-with seniority and continuity in service. The petitioner also be entitled for back wages from the date of raising industrial dispute till his reinstatement.

3. The respondent by way of reply raised preliminary objection *qua* maintainability, cause of action, petitioner not falling within the definition of workman, *locus standi* and non joinder of necessary party. On merits, it is denied that petitioner was engaged as a driver on daily wage basis *w.e.f.* 24.3.2015 to 7.5.2016. It is asserted that petitioner was not hired as a workman by the respondent. In the year 2015, the respondent department had purchased a new vehicle for office use and at that time there was no vacancy of driver existing and no person can be appointed as a driver without the prior approval of higher authorities. There was no publication made for appointment of driver by the respondent nor any applications were invited by the respondent. Petitioner being a local person and well known to the then SDM-*cum*-SDO (Civil) Salooni voluntarily offered his services as a driver without any remuneration on temporary basis as a stop gap arrangement. Being an official vehicle it was necessary to fill the Log Book and the same was done. No payment was made to the petitioner nor any money was drawn from the public exchequer. It is asserted that voluntarily services being rendered by the petitioner to the then SDO (Civil)

Salooni and thus he cannot claim benefits legally. It is denied by the respondent that the services of petitioner were orally terminated on 8.5.2016. It is asserted that he (petitioner) voluntarily gave his services only from 6.4.2015 to 12.3.2016 to the then SDM-*cum*-SDO (Civil) Salooni and thereafter left the work at his own volition. Thus claim of the petitioner is alleged to be distorted facts. Other averments and allegations made in the petition are denied in para-wise and it is prayed that the petition deserves to be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 8.5.2016 is/was illegal and unjustified as alleged? ..OPP

2. Whether the claim petition is not maintainable, as alleged? ..OPR

3. Whether the petitioner is not fall within the definition of workman as well as the respondent is not an industry under the provisions of the Industrial Disputes Act, 1947, as alleged. If so, its effect? ..OPR

4. Whether the petitioner has no cause of action as well as no locus standi to file the present case as alleged? ..OPR

5. Whether the claim petition is bad on account of non-joinder of necessary parties as alleged? ..OPR

Relief

6. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts as stated in the petition and he also produced on record log book of the vehicle.

7. Petitioner also examined Mohinder Singh s/o Haricharan working as Superintendent in the office of SDO Civil Salooni, District Chamba as RW2 and who have tendered the copies of log book consisting several pages Ext. PW1/A.

8. Respondent has examined Shri Naveen Kumar, SDM Sub Divisional Officer (Civil) Salooni, District Chamba, H.P. on oath by way affidavit RW-1. He has also produced on record copy of registration certificate Ext. R-1, list of candidates called for interview Ext. R-2, appointment order Ext. R-3 and office order Ext. R-4 by way of evidence.

9. I have heard the learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No
Issue No.2 : Yes
Issue No.3 : Partly yes

Issue No.4 : Yes
Issue No.5 : No
Relief : Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

11. It is the contention of the petitioner that he was employed as a driver on the vehicle attached to the office of SDM-*cum*-SDO (Civil) Salooni from 24th March, 2015 to 7th May, 2016. It is his case that he has rendered his services almost one year till the termination of his services on 8.5.2016. He has also made reference to the fictional breaks being given by the respondent intentionally however the perusal of terms of reference show that no reference with respect to allegation of fictional breaks has been made before this court hence adjudication would confine itself to the legality of termination of services of the petitioner *w.e.f.* 8.5.2016. The respondent has throughout contended that their department had purchased new vehicle in the year 2015 whereby the petitioner acquainted to the then SDO (Civil) Salooni was offering voluntary services as driver primarily for the purpose of filling the log book for the period under consideration. Learned ADA for the respondent has vehemently argued that there was no sanctioned post of driver at the time when the petitioner had rendered his services voluntarily to the then SDO Civil Salooni and his appointment was illegal and not in accordance with the procedure. The petitioner in his cross-examination has admitted that he is a local resident of Salooni and SDO Civil Salooni who was posted at that time was personally known to him. He has also admitted that the posts of driver are filled after the applications are called and post is available and advertised. He admitted that no interview letter was received by him and his interview was not conducted at the time of his engagement as driver. Though, he has denied that he was working as driver in newly allotted vehicle of SDO, merely because the SDO Civil was personally known to him. Further he admitted that no salary was paid to him during said period. He further stated that he moved an application in writing to the concerned SDO Civil, Salooni to re-engage his services however no such application has been produced on record for perusal of the court. PW2 Mohinder Singh who has produced on record log book Ext. PW1/A has admitted in his cross-examination that official record cannot be issued to any person without any proper authorization and only after following the due process. He has unable to state whether entries of log book were rightly or wrongly entered by petitioner Jagdish Chand. He has admitted that petitioner used to render his services voluntarily and was not paid any amount from Government. It emerges from the evidence led on behalf of the petitioner that he had worked with the respondent department without any gain and without remuneration in lieu of the services rendered by him. PW2 Mohinder Singh has admitted that the services have been rendered by the petitioner merely voluntarily in nature. The petitioner has admitted in his cross-examination that SDO Civil Salooni posted at the time of his engagement was personally known to him. This fact vindicated the stand of the respondent that petitioner was working as driver in the newly purchased vehicle of the SDO Civil Salooni merely on voluntary basis. No record of any payment of wages or other gain of remuneration produed before this court. RW1 Shri Naveen Kumar has also asserted that there was no sanctioned post of driver at the relevant time corresponding to the work which was being rendered by the petitioner. Though he has admitted that the petitioner has signed log book from 1.4.2015 to 12.3.2016 and as per record no remuneration was being paid to the petitioner however it is clear that there was no sanctioned post of driver, nor the due process by which the petitioner was being engaged to his services and/or competent authority appointing him on the post of driver in the office of SDO Civil Salooni. RW1 Shri Naveen Kumar has admitted in his cross-examination that Chandan Kumar was appointed after 7th May, 2016 however he has clarified that he was appointed as per rule after creation of post of driver in the year 2016. Petitioner however has shown his ignorance to the suggestion that Chandan Kumar was engaged to drive vehicle after completion of all the codal formalities against the

sanctioned post. In fact petitioner has admitted that he had not given any interview for the post of driver in the office of SDO Civil Salooni. The ratio laid down by Hon'ble Supreme Court in **Vibhuti Shankar Pandey versus The State of Madhya Pradesh, 2023 Live Law (SC)91** has held in para no.3 as follows:—

> "The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in Secretary, State of **Karnataka and Ors. v. Umadevi and Ors.,** as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019".

12. In view of the above law laid down by Hon'ble Supreme Court, it is clear that a person who has rendered his services on a post which has not yet been sanctioned by competent authority cannot claim on the said post. It was open for the petitioner to appear for interview once the legal procedure for appointment after creation of post of driver carried out by the department. Merely because the petitioner had signed the log book of the vehicle which clearly show that he was working as driver does not entitle him to lay claim on subsequently sanctioned post which was filled in after due procedure.

13. It is not the contention of the petitioner that he was denied the wages with respect to the work done by him with the respondent. The disengagement of the petitioner from the services which was being rendered by him cannot be classified as retrenchment and accordingly he was not entitled for the benefits under the Industrial Disputes Act, 1947, hence issue no.1 is accordingly decided in favour of the respondent.

Issues No. 2 and 4

14. In view of the claim preferred by the petitioner was that the petitioner was rendering voluntarily services with the respondent department on account of his personal acquaintance with SDO Civil Salooni who was posted at Salooni at the relevant time. It is clear from the record that there was no sanctioned post of driver and until the appointment of Chandan Kumar which took place as per procedure after the post being sanctioned. The claim of the petitioner does not fall within the definition of the Industrial Disputes Act and petitioner has no cause of action or *locus standi* to file the claim.

Issue No.3

15. Learned ADA for the State has vehemently argued that petitioner was not working for any remuneration he cannot be considered as workman under the Industrial Disputes Act. Similarly it is asserted that the respondent did not fall within the definition of industry under the Act. Considering definition of workman which have given in Section 2 Clause (s) of the Industrial Disputes Act, 1947 as follows:—

> "2(s)["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- *[Substituted by Act 46 of 1982, Section 2, for*

Cl. (s) (w.e.f. 21.8.1984).](i)who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or(ii)who is employed in the police service or as an officer or other employee of a prison, or(iii)who is employed mainly in a managerial or administrative capacity, or(iv)who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature].

16. The evidence on record nowhere shows that there were any settled term of the employment between the petitioner and the respondent. It appears that the petitioner had rendered voluntary services with the respondent corresponding to a post which had not yet been sanctioned by competent authority hence petitioner does not fall within the definition of workman under the Act. However considering the fact that the respondent department a systematic activity carried out by cooperation of employer and employees and involved in avocation of workman, the respondent department thus fall within the definition of industry under Section 2(j) of the Act. Hence issue no.3 is accordingly partly decided in favour of the respondent.

Issue No. 5

17. It is asserted by respondent that the SDO who had engaged the petitioner has not been made party in the present case. Considering overall circumstances of the case it is proved that there was no sanctioned post of driver at the time of engagement of petitioner. It is also established that the petitioner was working without any remuneration implying voluntarily nature of his employment. Petitioner has not claimed any dispute with the then SDO Civil posted at Salooni. The claim of the petitioner primarily against the respondent the present claim cannot be held to be bad on ground of non-joinder of necessary party, hence issue no. 5 is accordingly decided in the favour of petitioner.

RELIEF

18. In view of my discussion on the issues no. 1 to 5 above, the claim of the petitioner is not maintainable in view of evidence led before this court and also considering that there was no sanctioned post of driver at the office of SDO Civil Salooni during the period of engagement of petitioner. In these circumstances the claim petition deserve dismissal and is accordingly dismissed. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of August, 2024.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :47/2020
Date of Institution : 02.03.2020
Date of Decision : 31.08.2024

Smt. Satto Biwi alias Satto Devi w/o Shri Subhan Ali, r/o Village and Post Office Harnota, Tehsil Fatehpur, Distt. Kangra, H.P.

..Petitioner.

Versus

The Divisional Manager, H.P. State Forest Development Corporation Limited, Forest Working Division, Dharamshala, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner: Sh. Bhavnesh Chaudhary, Ld. Adv.
For Respondent: Sh. Gaurav Sharma, Ld. Adv.

AWARD

The following reference has been received by this court for the purpose of adjudication from the appropriate Authority:

> "Whether the action of the Divisional Manager, H.P. State Forest Development Corporation Limited, Forest Working Division, Dharamshala, District Kangra, H.P. to retire Smt. Satto Biwi alias Satto Devi w/o Shri Subhan Ali, r/o Village and Post Office Harnota, Tehsil Fatehpur, District Kangra, H.P. from services on attaining the age of superannuation on 30.06.2013, as per order No. HPSFDC/FTR/E-29(A)/1993-2021, dated 02.07.2013 and not to consider the documents submitted by the workman regarding her age proof before the employer issued by the Secretary, Gram Panchayat, Manoh Sihal, Fatehpur, District Kangra, H.P., as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority and past service benefits including regularization of services the above Ex-worker is entitled to from the above employer?"

2. The brief facts of the claim petition are that the petitioner was engaged as part time sweeper by the Divisional Manager, Forest working Division Fatehpur, Tehsil Fatehpur, District Kangra, H.P. on daily wages on 16.08.1984 but she has been working as a daily wager *w.e.f.* 01.09.2010 as per Government Policy. It is alleged that on 30.06.2013 respondent No.1 forcibly retired the petitioner from her service on the basis of birth certificate issued by the medical board on 20.09.2003. At the time of appointment the petitioner has produced certificates regarding her age which has shown age as 01.07.1961 from the Panchayat *i.e.* copy of Parivar Nakal. The petitioner had produced such Parivar Nakal as proof of birth certificate and no objection has been raised by the Forest Department. The petitioner asserted that there is no need to obtain birth certificate from the medical board after 19 years of service. The petitioner was not satisfied with the examination of the medical board and she has been illegally retired 6 years before her actual date of retirement. According to the petitioner she has suffered financial loss. It is prayed that due to such act of respondent, petitioner deserves to be compensated with all consequential benefits.

In the light of these averments she has prayed that the order of retirement made by the respondent may be set aside and quashed. The respondent be directed to pay all financial benefits *i.e.* continuity in service/seniority, regularization and back wages/arrears of pay with interest @ 12 % per annum.

3. Respondent in their reply raised preliminary objections *qua* maintainability, non-production of educational certificate and birth certificate by the petitioner and petition being bad for material particulars. It is asserted by the respondent that as per Government policy the services of the petitioner were converted in the daily wager *w.e.f.* 20.08.2010. The maximum age of retirement of daily wager in Forest Corporation was fixed at 58 years except for Class-IV employees who were engaged before 10.05.2001 regarding whom the age of retirement was 60 years. The petitioner consented to convert herself to daily wager and also the age of retirement. She was requested to attend medical board for ascertainment of age because she could not produced any educational certificate or birth certificate. The medical board declared her age as 48 years on 20.09.2003. Thus, date of birth of petitioner was presumed to be 01.07.1955. The respondent has submitted that Parivar Nakal is not valid proof of age. Other averments made in the claim petitioner have been denied para wise and prayed that the claim deserves to be dismissed.

4. In rejoinder the preliminary objections have been denied and facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed on 10.11.2022 for adjudication and determination:—

1. Whether action of the respondent to retire the petitioner from her service on attaining the age of superannuation on 30.06.2013 as per order dated 02.07.2013 and not to consider the documents regarding her age proof is/was illegal and unjustified, as alleged? ..OPP.

2. If issue no.1 proved in affirmative, to what relief, the petitioner is entitled to? ..OPP

3. Whether the claim petition is not maintainable, as alleged? ..OPR

4. Whether the claim petition is hit by the law of limitation, as alleged? ..OPR

5. Relief.

6. The petitioner in order to prove her case examined by way of affidavit Ext. PW1/A. She has also produced on record B.P.L certificate containing particulars of the family of petitioner Ext. PX and Documents Mark-X.

7. Respondent has examined Sh. Naresh Shrma, Divisional Manager Forest Working Division Dharamshala by way of affidavit Ext. RW1. He has also produced on record copy of letter dated 02.04.2011 Ext. RW1/B, copy of letter dated 03.02.2011 Ext. RW1/C, copy of letter dated 23.12.2010 Ext. RW1/D, copy of certificate issued by the medical board Ext. RW1/E, copy of letter dated 15.07.2010 Ext. RW1/F and copy of office order Ext. RW1/G in evidence.

8. I have heard the learned Counsel for the petitioner as well as learned counsel for the respondent at length.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes.
Issue No.4	: No
Relief.	: Claim petition stands dismissed and reference is decided accordingly.

REASONS FOR FINDINGS

Issue No. 1

10. It is contention of the petitioner that she was engaged by the respondent on 16.08.1984 and had worked as daily wager *w.e.f.* 01.09.2010. These facts are not disputed by the respondent. The petitioner again asserted that she produced the documents in order to ascertain her date of birth which show her date of birth as on 01.07.1961. She has relied upon the copy of Parivar Nakal. Contention of the respondent is that the copy of Parivar Nagal cannot be the basis of determining the date of birth by the employee specially for the purpose of determining the date of superannuation from the department. The petitioner in her cross-examination has denied that she consented to reduce her retirement age to 58 years. She has shown ignorance the fact that retirement age of Class-IV employee of Forest Corporation is 58 years as fixed by the Board of Director. Necessary documents have been produced on record by the respondent which shows that Board of Director Forest Corporation had fixed age of retirement of daily wager at 58 years. The consent of the petitioner duly signed by her, in this regard Ext. RW1/C and Ext. RWI/A.

11. Since the petitioner was employed as daily wages *w.e.f.* the year 2010 it was necessary to determine her age for superannuation. The petitioner has admitted that she appeared before the Doctor to ascertain her age and has shown ignorance to the fact that her age was ascertained as 48 years in the year 2003 and consequently the department presumed her date of birth as 01.07.1955. The documents Ext. RW1/E is a copy of medical certificate issued by the medical board who after examining the petitioner as on 20.09.2003 had opined her age at the relevant time was 48 years. There is no evidence to show that the findings of medical board were challenged by the petitioner before the appropriate Authority. The contention of the learned counsel for the petitioner that the Parivar Nakal which has been produced by the petitioner before the department was sufficient document for ascertaining her date of birth and consequently opinion of the medical board was not required cannot be accepted. It is settled preposition of law that entries in Parivar Register denoted only the number of family members and there particulars but are not authenticated proof of age or date of birth of all the family member mentioned therein (***Manoj @ Monu @ Vishal Chaudhary Vs. The State of Haryana and other Criminal Appeal No. 207/2022 (Arising out of SLP(Criminal) No. 8423/2019.*** In accordance with the **H.P. Panchayati Raj Act and Rules 1997** regarding the preparation of Parivar Register. It is provided that Parivar Register should include the names and details of all the residents of the village *i.e.* part of Sabha Areas, organization by family.

12. In order to determine the age of person reliance can be laid on the birth register or birth certificate along-with record of any educational institution attended by such person. In absence of these authenticated documents a medical examination of employee / workman would be the most reliable resources of determining his/her age at the time of his examining by medical board. Findings of medical board over ride the entries in Parivar Nakal.

13. Learned counsel for the petitioner has further submitted that the consent of the petitioner for the age of retirement was obtained without informing her is refuted from the documents which were being signed by her. There is no evidence produced or other documents

regarding the consent of the petitioner being obtained by fraud or misrepresentation. Thus, the action of the respondent to retire the petitioner from her service on attaining the age of superannuation on 30.06.2013 as per order dated 02.07.2013 and not considering the documents *i.e.* Parivar Nakal as a proof of her age was not illegal and unjustified. Issue No.1 is accordingly decided in favour of the respondent.

Issue No. 2

14. It has been proved that the age of petitioner was got determined by the respondent in accordance with settled provisions of law. There being no infirmity in the determination of age of the petitioner and her consequent superannuation. Issue is decided in favour of the respondent and the petitioner is not entitled any relief.

Issue No. 3

15. The maintainability of petition was specific challenged on the ground that the petitioner had not produced any reliable document to prove her date of birth. In the present proceedings also only the copy of Parivar Nakal could be provided by the petitioner which cannot be considered as authenticated documents to determine her age and date of birth. This claim petition is not maintainable.

Issue No. 4.

16. Onus of proving issues of the respondent it appears that the petitioner had retired from service in the year 2013 and reference had been made to this Court in February, 2020. The petitioner being illiterate there is nothing on record to suggest that there is deliberate and intentional delay on the part of petitioner for referring the dispute for legal adjudication. The claim of the petitioner cannot be held to be barred by limitation.

RELIEF

17. In view of my findings on the issues no. 1 to 4 above, the claim preferred by the petitioner does not deserve to be allowed by this Court.

18. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Reference No. : 91/2015

Date of Institution : 04.03.2015
Date of Decision : 31.8.2024

1. Shri Jang Bahadur s/o Late Shri Gian Singh, r/o Village Dhyanoon, P.O. & Tehsil Salooni, District Chamba, H.P. (since diseased) through his LRs:-

2. Sh. Hem Raj s/o Late Shri Jang Bahadur, s/o Late Shri Gian Singh, r/o Village Dhyanoon, P.O. & Tehsil Salooni, District Chamba, H.P.

3. Sh. Mohinder s/o Late Shri Jang Bahadur, s/o Late Shri Gian Singh, r/o Village Dhyanoon, P.O. & Tehsil Salooni, District Chamba, H.P.

4. Sh. Rattan Chand s/o Late Shri Jang Bahadur, s/o Late Shri Gian Singh, r/o Village Dhyanoon, P.O. & Tehsil Salooni, District Chamba, H.P.

5. Hilo Devi d/o Late Shri Jang Bahadur, s/o Late Shri Gian Singh, r/o Village Dhyanoon, P.O. & Tehsil Salooni, District Chamba, H.P. ... *Petitioners.*

Versus

The Executive Engineer, Salooni Division, HPPWD Salooni, District Chamba, H.P.
...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner: Sh. T.R. Bhardwaj, Ld. AR
For Respondent: Sh. Ravi Kumar, Ld. ADA

AWARD

The following reference has been received by this court for adjudication by the appropriate Authority/Deputy Labour Commissioner:

> "Whether the demand raised *vide* demand notice dated 12-12-2011/15-12-2011 by Shri Jang Bahadur s/o Shri Gian Singh, r/o Village Dhyanoon, P.O. Salooni, Tehsil Salooni, District Chamba, through the Secretary, P.W.D. and I.P.H. Employees and Mazdoor Union Bhalei Camp, Office HPSEB Colony Complex Salooni, District Chamba, H.P. regarding regularization of his daily wages services *w.e.f.* 01-01-2004 by the Executive Engineer, Salloni Division, H.P.P.W.D., Salooni, District Chamba, H.P., is legal and justified? If yes, to what relief, past service benefits, seniority and other consequential service benefits the above workman is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the deceased petitioner workman was engaged by the respondent on daily wages on muster roll basis in the month of June, 1993 under HPPWD Division Salooni and worked with respondent since June, 1993 to 31.12.2008. The petitioner was retired from his services of daily wager before attaining the age of 60 years *w.e.f.* 31.12.2008. It is asserted that since January, 1995 the petitioner worked continuously and completed 8 years continuous service with a criteria of 240 days in each calendar year as on 31.12.2008 and thus according to the petitioner he was entitled for regularization in work charge cadre *w.e.f.* 1.1.2003 under 8 years regularization policy of H.P. Government dated 6.5.2000. This policy was considered by Hon'ble High Court of H.P. in CWP No.2735/2010 titled as Rakesh Kumar vs. State of Himachal Pradesh decided on 28.7.2010. Despite this the respondent did not

regularize the services of the petitioner till his death. During conciliation proceedings the respondent admitted that petitioner had completed 8 years of continuous service as on 31.12.2002 and was eligible for work charge status *w.e.f.* 1.1.2003 but even then respondent did not regularize the services of the petitioner. Respondent failed to regularize the services of petitioner on the ground that petitioner was of Nepali origin and he had to submit certificate of Indian Citizenship for the purpose of regularization. Petitioner had submitted his domicile Himachali certificate with the respondent. According to petitioner number of Nepali origin workmen have been regularized in work charge cadre by the respondent department. Services of juniors who are daily wagers were also regularized *w.e.f.* 1.1.2003. On the advised of respondent petitioner appeared before the Medical Board in Zonal Hospital/Regional Hospital Chamba on 22.2.2014 for assessment of his age and as per declaration by the medical board he was assessed to have completed 51 years of age on 22.2.2014 thus the petitioner was below 60 years of age as on 22.2.2014. Thus petitioner was wrongly retired/superannuated on 31.12.2008 by the respondent. Petitioner had continuously made repeated request for regularization of his services *w.e.f.* 1.1.2003 and also again his premature retirement however respondent did not accede to the request of the petitioner and he was retired at age of 45 years and 10 months on 31.12.2008. In the light of these averments it is asserted that depriving the petitioner from regularizing of services *w.e.f.* 1.1.2003 in work charge cadre is improper, illegal and unjustified and against the principle of natural justice. The petitioner prayed for direction to the respondent to regularize his services as beldar/chowkidar in work charge cadre *w.e.f.* 1.1.2003 under the 8 years regularization policy of H.P. Government. Petitioner also prays for the payment of arrears of difference of wages *w.e.f.* 1.1.2003 to 31.12.2008 as well as payment of full wages *w.e.f.* 1.1.2009 to 10.12.2014. It would be important to mention here that the amended claim petition has been preferred on behalf of LRs of the petitioner who has expired during the process of conciliation.

3. In reply on behalf of respondent preliminary objections *qua* maintainability, petition being bad on account of delay and laches and petitioner not entitled for non impleadment of legal heirs has been raised. On merits, it is admitted that the deceased petitioner workman was engaged by respondent in the month of June, 1993. It is also admitted that the policy of H.P. Government was considered by Hon'ble High Court of Himachal Pradesh *vide* CWP No.2735/2010. It was however denied that petitioner had worked continuously with the respondent completing 240 days in each calendar year. It is however admitted that petitioner was covered under the policy dated 6.5.2000 wherein the services of the petitioner after completing 8 years continuously with the criteria of 240 days in a calendar year were to be regularized. According to respondent the name of the petitioner could not be sponsored or recommended before screening committee as he has failed to produce certificate of Indian Citizenship despite repeated directions. The petitioner however worked with the respondent till the age of his superannuation i.e. 60 years as on 31.12.2008. Respondent also asserted that petitioner was directed to produce date of birth certificate or to get his age ascertained by the medical board. Other averments were denied and it was prayed that claim was not maintainable accordingly deserves to be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the demand raised vide demand notice dated 12-12-2011/15-12-2011 by the deceased petitioner Sh. Jang Bahadur for regularization of his daily waged service *w.e.f.* 01-01-2004 by the respondent is/was legal and justified, as alleged? ..OPP

2. If issue No.1 is proved in affirmative to what service benefits the present petitioner is entitled to? ...OPP

3. Whether the claim petition is not maintainable, as alleged? ...OPR

4. Whether the claim petition is bad on account of delay and latches, as alleged? ...OPR

Relief.

6. The LRs of the deceased petitioner in order to prove his case has examined one Hem Raj s/o Jang Bahadur by way of affidavit Ext. PW1/A wherein he reiterated the facts as stated in the petition. He has also produced on record copy of letter dated 24.5.2013 Ext. PW1/B, copy of domicile certificate Ext. PW1/C, copy of certificate issued by Medical Board Ext. PW1/D, copy of mandays chart Ext. PW1/E, copy of letter dated 15.12.2011 Ext. PW1/F, copy of demand notice dated 12.12.2011 Ext. PW1/G, copy of reply to the demand notice Ext. PW1/H, copy of list of junior workers Ext. PW1/J, copy of letter dated 15.6.2015 Ext. PW1/K, copy of judgment dated 25.4.2016 Ext. PW1/L, copy of legal heirs certificate Ext. PW1/M, copy of parivar register Ext. PW1/N, copy of parivar register Ext. PW1/O and copy of letter dated 30.10.2013 Ext. PW1/P.

7. Respondent has examined RW1 Shri Deepak Kumar, Executive Engineer, HPPWD Salooni, District Chamba by way of affidavit Ext. RW1/A wherein he reiterated the facts as stated in the reply. He also produced on record mandays chart Ext. RW1/B, copy of letter Ext. RW1/C, copy of domicile certificate of petitioner Ext. RW1/D, copy of letter dated 12.11.2013 Ext. RW1/E, copy of letter dated 28.1.2014 Ext. RW1/F, copy of medical certificate Ext. RW1/G and copy of extract of family register Ext. RW1/H.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Assistant District Attorney for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:Yes
Issue No.2	:decided accordingly
Issue No.3	:No
Issue No.4	:No
Relief.	:Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. It is contention of the petitioner that he had worked since 1993 onwards fulfilling criteria of 240 days in each calendar year as on 31.12.2002. Accordinlgy, the petitioner became entitled for regularization in work charge cadre *w.e.f.* 1.1.2003 under 8 years regularization policy of Himachal Pradesh Government. RW1 Er. Deepak Kumar has stated in his affidavit that the petitioner did not complete 240 days in each calendar year as is clear from the mandays chart 1993-1994. He further deposed that petitioner was covered under the policy dated 6.5.2000 wherein the services of the persons who had completed 8 years of continuous service with criteria of 240 days in each calendar year were to be regularized. He also stated that the name of petitioner could not be recommend before the screening committee as he could not produce certificate of Indian

Citizenship. In his cross-examination he admitted that as per Ext. PW1/E the petitioner had completed his service period of 8 years continuous service and as per eight years regularization *w.e.f.* 1.1.2003. Petitioners have pleaded that the policy of H.P. Government dated 6.5.2000 was considered by the Hon'ble High Court of H.P. in CWP No.2735/2010 titled as Rakesh Kumar vs. State of Himachal Pradesh decided on 28.7.2010. Learned Authorized Representative for the petitioner has also laid reliance upon the judgment of Hon'ble High Court of H.P. in CWP No.9441 of 2011-E along with connected matters decided on 27th April, 2012 wherein the Hon'ble High Court has observed as follow:—

> "The issue raised in these cases pertains to conferment of work charge status/regularization of Nepali citizens. It is the case of the petitioners that the matter has been considered by this Court leading to common judgment dated 9.11.2011 in CWP No. 5702 of 2011 titled Dal Bahadur vs. State of H.P. and others and other connected cases, wherein it has been held as follows: "6. What emerges from the averments contained in the petitions is that in CWP Nos. 5702/2011, 5706/2011, 5971/2011, 5971/2011, 5974/2011, 5975/2011 and 5995/2011 had been continuously working and had completed more than 8 years service upto 31.3.2004. Petitioner in CWP No. 5705/2011 is in continuous service since 1994. These petitioners have also completed 240 days in a block of 12 calendar months. The cut-off date prescribed for regularization, as per averments contained in the reply to CWP No. 5702/2011 as well as in the ::: impugned orders, is 31.3.2004. In other words, the petitioners were required to complete 8 years service upto 31.3.2004. The amendment in the Rules called "Himachal Pradesh Public Works Department Recruitment and Promotion (First Amendment) Rules, 2004" has been made on 3.7.2004 whereby Rule 14 has been substituted requiring that a candidate for appointment to any service or post must be a citizen of India. The State has taken a decision to convert the work charge posts to regular posts in the month of August, 2005, but the cut-off date for completion of 8 years service is 31.3.2004. The amendment carried out in the Recruitment and Promotion Rules notified on 3.7.2004 in the Gazette will apply prospectively and shall not take away the accrued/vested rights of the petitioners to be considered for regularization after completion of minimum service of 8 years as on 31.3.2004. It has come in the reply that the petitioners were eligible to be considered for regularization, however, their cases have not been considered only on the ground that they are not citizens of India. Moreover, when the petitioners were engaged, no such condition was imposed. The respondents have also over-looked the ratio of judgment rendered by this Court in Man Singh's case (*supra*) after taking into consideration the resolution passed by the Central Government on 1.3.1977, the office memorandum dated 10.5.1978 and letter dated 16.7.2009 addressed by the Secretary (Agriculture) to the Government of Himachal Pradesh to the Director of Agriculture, whereby it has been laid down that as far as Nepalese citizens are concerned, only eligibility certificates are required. In normal circumstances since the petitioners have been engaged after 31.12.1993, they could only be conferred with work charge status. However, in the instant case, respondent-State has taken a conscious decision to convert work charge posts in regular posts in the month of August, 2005. The cut-off date provided was 31.3.2004. All the petitioners had already completed 8 years of service with 240 days in each calendar year before 31.3.2004. Thus, now the petitioners have to be accorded regular status and not work charge status after the conversion of work charge posts in regular posts with a cut-off date of 31.3.2004. This will apply prospectively. Decision dated 31.12.2005 will cover the cases of all the daily wagers, who have completed 8 years of continuous service as on 31.3.2004 for conferment of regular status. In the case in hand, the amendment to the Recruitment and Promotion Rules requiring the candidates to be Indian citizens has only been carried on 3.7.2004. 7. Accordingly, in view of the observations and discussions made hereinabove, all the petitions are allowed. Impugned Annexures dated 30.6.2010 and 19.11.2010, respectively are quashed and set aside. Respondents are directed to accord regular status to

the petitioners since they have completed 8 years of service with 240 days in each calendar year on or before 31.3.2004, within a period of 8 weeks, after the production of certified copy of this judgment by the petitioners. Pending application(s), if any, also stands disposed of. No costs".

11. The Hon'ble High has further held as follows:—

> "Needless to say that the decision thus taken will govern the cases, which have already been rejected and which is the subject matter of some of the writ petitions. Depending on the outcome of the order thus passed by the Government, the benefits, if any, to which the individual workman is found entitled shall be disbursed within another eight weeks and if not the workman will be entitled to interest at the rate of 8%".

12. It appears that the petitioner was unreasonable deprived of the regularization policy even though he submitted his bonafide certificate before the respondent department. The date on which the services of the petitioner became due for the purpose of regularization was much prior to the framing of HPPWD recruitment and services rules (amended rule) dated 3.7.2004. In accordance with the directions given by Hon'ble High Court that production of the certificate of Indian Citizenship was not a pre condition for regularization or grant of work charge status to the services of the petitioner. The petitioner became fully eligible for regularization of his services as on 1.1.2003.

13. Another aspect of the case is that the petitioner was retired by the respondent on 31.12.2008. No document could be produced by the respondent to show that they had relied upon this document to assess the age of the petitioner eligibility for superannuation as on 31.12.2008. The medical certificate Ext. PW1/D issued by Medical Board on 22.2.2014 assessed the age of petitioner at 51 years as on 22.2.20014. It is proved evidence on record that superannuation of the petitioner on 31.12.2008 was without any age proof. RW1 Er. Deepak Kumar admits that the petitioner was eligible for regularization. Since the document on the basis of which he was deprived of service benefits were not required at the relevant time. The demand raised by petitioner for regularization of his daily wage services *w.e.f.* 1.1.2004 with the respondent was legal and justified. Accordingly issue no.1 is decided in the favour of petitioner.

Issue No. 2

14. The petitioner in the present case deprived of his services benefits regarding grant of work charge status/regularization in unjust manner and was also superannuated without any age proof leading to his superannuation. Thus the petitioner/LRs of the petitioner are entitled for the deemed regularization of services of the petitioner in the work charge cadre *w.e.f.* 1.1.2003. The petitioners/LRs of deceased petitioner are also entitled to recover difference of wages to which the petitioner would have been entitled to *w.e.f.* 1.1.2003 to 31.12.2008. The LRs of the deceased petitioners are also entitled to lump sum back wages to the tune of Rs.1 lac in lieu of wages *w.e.f.* 1.1.2009 till the death of the petitioner *i.e.* 10.12.2014. The LRs of deceased petitioner also held entitled to the consequential benefits receivable by the petitioner who has presumed to be died in harness as per rules and policy of the Government of H.P. Issue no.2 is decided accordingly.

Issues no. 3 and 4

15. The onus of proving these issues on the respondent. Though it is held on behalf of respondent that the claim is suffering from delay and laches. However, it appears that petitioner had been continuously pursuing his claim right after his illegal superannuation by the respondent and he had died during the adjudication of the dispute finally. There does not appear to be any delay and

laches on behalf of the petitioner and the petition is maintainable considering the facts and circumstances of the case. Hence both these issues are decided in the favour of petitioner.

RELIEF

16. In view of my discussion on the issues no. 1 to 4 the claim petition succeeds and is partly allowed. Thus the petitioner/LRs of the petitioner are entitled for the deemed regularization services of the petitioner in the work charge cadre *w.e.f.* 1.1.2003. The petitioners/LRs of deceased petitioner are also entitled to recover difference of wages to which the petitioner would have been entitled to *w.e.f.* 1.1.2003 to 31.12.2008. The LRs of the deceased petitioners are also entitled to lump sum back wages to the tune of Rs.1 lac in lieu of wages *w.e.f.* 1.1.2009 till the death of the petitioner *i.e.* 10.12.2014. The LRs of deceased petitioner also held entitled to the consequential benefits receivable by the petitioner who is presumed to be died in harness as per rules and policy of the Government of H.P. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 81/2019
Date of Institution : 26.6.2019
Date of Decision : 31.8.2024

Shri Ravi s/o Sh. Magji Ram, r/o V.P.O. Rehlu, Tehsil Shahpur, District Kangra, H.P.
...Petitioner.

Versus

The Principal, D.A.V. Public School Gohju, Kangra, H.P. *... Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, Ld. A.R.
For Respondent : Sh. M.G. Thakur, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication from the appropriate Government/Deputy Labour Commissioner:

> "Whether termination of services of Shri Ravi s/o Shri Magji Ram, r/o V.P.O. Rehlu, Tehsil Shahpur, District Kangra, H.P.(who was employed as clerk-*cum*-accountant) *w.e.f.* 01.04.2018 by the Principal, D.A.V. Public School Gohju, Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified?. If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts of the claim petition are that the petitioner had applied for the post of Clerk-*cum*-Accountant in the respondent management when D.A.V Public School Gohju advertised different types of vacancies in daily newspaper during the session 2012. The petitioner appeared in the interview before the interview committee and was appointed to the post of clerk-*cum*-accountant in the month of September, 2012. The petitioner submitted all the documents required by the interview committee and was selected for the post of clerk-*cum*-accountant at adhoc basis for the period of one year on the basis of appointment letter. The petitioner joined his duties in the institution of D.A.V. Public School, Gohju on 01.10.2012. Thereafter, from 01.10.2012 to 31.03.2018 the petitioner has discharged his duties honestly and diligently with entire satisfaction of the management of the LMC as well as the Principal of the institution. During this period no show cause notice or charge sheet was issued to the petitioner for his misconduct. On 05.01.2018 the petitioner has represented to the institution that he has rendered 5 years continuous service and his service be regularised on regular pay scale as fixed by the college managing committee. No action was taken by the respondent till 31.03.2018. Surprising, however, on 01.04.2018 the petitioner was not allowed by the Principal to enter this school and it was mentioned that as per directions of CMC, Delhi the petitioner was given only 7 days breaks. On 07.04.2018 the petitioner has received telephonic call from the officiating Principal to join the duty on 09.04.2018, however, she has denied to join his duty without permission of Regional Director as Mr. V.K. Yadav. When the petitioner approached Mr. V.K. Yadav he was verbally informed about the allegations against him. According to the petitioner, during the period of service no written or oral allegations were made against his alleged misconduct. Before termination of the service of the petitioner Smt. Kanchan who was transferred from Delhi to this institution in the year 2015 was also working in the similar post. No allegations were ever made but Mrs. Kanchan or Principal against the petitioner during the period of his service. The petitioner asserted that he had worked continuously for 5 years completed more than 240 days in each and every calendar years as well as last 12 calendar year proceedings months from the date of his alleged termination *w.e.f.* 01.04.2018. The petitioner was not paid one month pay in lieu of notice period and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947. Thus it is alleged that termination of the service of petitioner is null-void. It was further submitted that the petitioner had completed 2 years of satisfactory probationary period on adhoc basis without any misconduct. Hence, the petitioner was entitled for regularization of post of clerk-*cum*-accountant. The service of one Sh. Abhinash Kumar was appointed by the LMC DAV, Ambota on adhoc basis as clerk-*cum*-accountant has been regularized by the institution of DAV Ambota with prior permission from the office of CMC Delhi but the petitioner was not granted such regularization. Smt. Kanchan is regular employee of the institution and is getting pay scale as per patron of Central Govt. Employees. In these circumstances, the petitioner was also entitled for equal pay for equal work. The petitioner has alleged that the termination of his service by the respondent without any notice and compensation is unfair labour practice, highly unjustified, arbitrary and contrary to the mandate of the I.D.Act, 1947. The petitioner has prayed that his illegal termination may be set aside and respondent be directed to reinstate his service *w.e.f.* 01.04.2018 with full back wages, seniority, continuity in service and other consequential benefit along-with litigation cost.

Respondent be also directed to pay equal pay for equal work at par with Smt. Kanchan for the period from 01.04.2015 to 31.03.2018.

3. In reply on behalf of the respondent preliminary objection *qua* maintainability, non-joinder of necessary parties, suppression of material fact etc. were raised. On merits, it was admitted that the petitioner joined school as LDC after conducting of interview but according to the respondent, engagement of petitioner was purely on contract basis and there is specific clause in the contract that the service of the petitioner was as per directions of head of the institution and after admitting and agreeing for all the conditions the petitioner had executed the contractual documents. It is further submitted that the contract of petitioner was renewed every year. During the year 2017-18 last contract / memorandum with the incumbent was executed for the period commencing from 03.04.2017 to 31.03.2018. It is alleged that the petitioner did not apply for fresh contract with the school after receiving and relieving order on 31.03.2018. Thus the petitioner was not interested to continue with the service as LDC. The appointment letter of petitioner was clear of the fact that the appointment of petitioner was temporary and no notice was required to be served for termination of his services. In the present case relieving order was issued to the petitioner and which was accepted by him. It is alleged that petitioner himself was not interested to serve with the respondent and he did not turn up to execute any fresh contract with the management. Hence, there was no violation of the provisions of the Act. In addition to these averments it is also submitted that the petitioner had left the work at his own, he was called by the Principal for disclosing passwords of various websites which does not disclose nor given in writing to any employee of the school. The petitioner was also called on personal mobile phone by the Principal. It is prayed that appointment of other persons mentioned by the petitioner was purely based on qualification and service rendered, the petitioner did not turn up after relieving letter, thus, the petitioner cannot claim any benefits like other employees of the school.

4. In rejoinder the preliminary objections were denied and facts stated in the petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed on 29.04.2022 for adjudication and determination:—

1. Whether the termination of the services of the petitioner *w.e.f.* 01.04.2018 by the respondent is violation of the provisions contained under Section 25-F of the Act, as alleged? ...OPP.

2. Whether the respondent has violated the provisions contained under Section 25-G and 25-H of the Act, as alleged? ...OPP.

3. If issues no.1&2 are proved in affirmative, to what relief , the petitioner is entitled to? ...OPP.

4. Whether the claim petition is not maintainable, as alleged? ...OPR.

5. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? .OPR.

6. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? ...OPR.

7. Relief.

6. The petitioner in order to prove his case produced his evidence by way of affidavit Ext. PW1/A. He also produced demand notice Ext. PW1/B, reply to the demand notice Ext. PW1/C, rejoinder to the notice Ext. PW1/D, letters Ext. PW1/E1 to E3, PF statement of the petitioner from year 2012-16 Ext. PW1/F1 to F5 and information regarding under RTI Ext. PW1/G.

7. Respondent has examined Smt. Anita Verma by way of affidavit RW-1. Wherein she reiterated the facts stated in the reply and also produced on record list of employees with pay scale Ext. R-1, copy of chapter 9 of the bylaws Ext. R-2 and attendance register of petitioner Ext. R-3 in evidence.

8. I have heard the learned Counsel for the petitioner as well as learned counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: Yes
Issue No.3	: Decided accordingly.
Issue No.4	: No.
Issue No.5.	: No
Issue No.6	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. Section 25-F of the I.D. Act, 1947 provides for the conditions precedent to the retrenchment of workers employed in any industries who has been in continuous service for not less than one year under an employer. It is contention of the petitioner that the petitioner has continuously worked in the respondent college for 5 years. He had completed 240 days of work in each calendar year and also in the year preceding his alleged termination. Learned counsel for the petitioner has argued that the termination of petitioner on 01.04.2018 was un lawful without following any procedure, inquiry, show cause notice, charge sheet, on account of misconduct alleged by the respondent. No documents could be produced to prove the employment of petitioner was a contractual basis and also for determining terms of employment. The attendance register Ext. R-3 clearly shows that the petitioner had worked continuously for 5 years without any breaks. The petitioner presented an application/representation to regularize his serviced to the Principal of the College consequent to which his services were illegally terminated by the respondent. The EPF account of the petitioner was also being maintained by the respondent which is Ext. PW1/F1 to F5.

11. Learned counsel for the respondent has further submitted that the appointment of petitioner was purely on contractual basis for a fixed interval of time. After expiration of the contract for the year 2017-18 on 31.03.2018 the petitioner failed to appear before the management on 01.04.2018 for renewal of his contract. Smt. Kanchan as mentioned in the pleading by the petitioner was regular employee. Disengagement of service of the petitioner was due to his wilful absence and also considering the fact that he did not approach the respondent for renewal of his contract.

12. It is undisputed fact that the petitioner was appointed as accountant by the respondent after advertisement of post in the newspaper and conducted of interview. It is emphasized by the respondent that the employment of petitioner was on contractual basis only. The petitioner in his cross-examination admitted that no appointment letter was handed over to him at any point of time during his service. He also admitted that his contract was on prescribed performa of the school. He also admitted that his last agreement / contract was in the year 2017-18 and it was to end of 31.03.2018. He further denied that he did not report to the school. He admitted that 03.04.2018 was his first working days of the new session. He denied that he did not hand over the key of the office and disclose the passwords of various websites to the school management and confidential documents of the school had gone missing during his tenure . He admitted that he was contractual adhoc employee. RW1 Smt. Anita Verma admitted that the petitioner had worked continuously in their school from 01.10.2012 to 31.03.2018. With regard to the allegations made against petitioner during period of his employment she admitted that they have not produced any complaint on record. It is the contention of the respondent that the status of the petitioner was that of a contractual person and during year 2017-18 there was last contract/memorandum with the respondent. Pertinent to mention that neither any copy of the appointment letter of petitioner nor any copy of memorandum of contract with the petitioner was produced in order to show the terms of contract between the petitioner and the respondent. It is time and again asserted that the respondent issued relieving order of employee on completion of contract period but Smt. Anita Verma admits that they have not placed relieving order of the petitioner on record. Thus, contention of the respondent that after receiving relieving order the petitioner did not turn up before the management for renewal of contract does not appear to the credible. RW1 Smt. Anita Verma has made a statement regarding continuous employment from 1.10.2012 to 31.03.2018 and deduction of EPF of petitioner from 1.10.2012 to 31.03.2018. Contract of service or appointment letter was not produced before this Court. In these circumstances, it could be presumed that in accordance with the contention raised by respondent, petitioner had to apply fresh for renewal of contract. No such application made on behalf of the petitioner during the preceding year of his alleged contractual employment could be produced by the respondent. It appears that the contractual nature of continuous employment of petitioner was deliberately made by the respondent in order to exempt the service of the petitioner from the purview of the provisions of the I.D.Act. The Hon'ble High Court of Gujrat in **Jamnagar Muncipal Corporation Vs. Avdesh Kishorbhai Solanki, 2022 Live Law (Gujrat) (299)** was held in Para Nos. 10 and 11 as follows:—

"10. This court in case of in case of Gujrat Agro Industries Corporation Ltd.(*supra*), has clearly held as under:—

11.1. Further, the fact that consecutive orders repeatedly appointing the claimant for short duration are passed from time to time, go to show that the such arrangement is a conscious decision and attempt of the respondent to give artificial breaks in the service of the claimant so as to circumvent or frustrate the statutory provisions, more particularly section 25F of the Act and to misuse, rather abuse, the provisions under clause(bb) of section 2(oo) of the Act with a view to depriving the claimant of his legal rights conferred by various provisions under different Labour Laws.

11.2 Under the circumstances, the corporation is not justified in taking shelter under clause (bb) of section 2(oo) of the Act. In the background of above facts, the contention based on the ground of clause (bb) of section 2(oo) cannot be entertained and accepted.

11.3 It is pertinent that Section 25 F of the Act is beneficial provision which is introduced with the object to provide some relief to the workman who is visited with drastic action of retrenchment on account of which the workman and his entire family are thrown into life full of uncertainties, difficulties and dark future. In connection with the said beneficial provision an exception is carved out by virtue of clause (bb) of Section 2(oo). Certain types of termination of service, which would, ordinarily, tantamount to retrenchment [but for the said clause(bb) of Section 2(oo) of the Act], are taken out of Section 25 of the Act. The said clause (bb) provides an exception in respect of the terms and condition prescribed by section 25F. Therefore, the said clause (bb) of Section 2(oo) of the Act must be construed strictly. This is necessary so as to curb abuse by unscrupulous employers. Otherwise the said provision can prove to be a handle or weapon in the hands of the employer to resort to policy of hire and fire and indiscriminate violation of Section 25F of the Act as well as to circumvent various provision under different Labour Laws and deprive the workmen the benefits which would flow from continuous service. The scheme of the Act and object of the clause (bb) of Section 2(oo) do not permit, rather abhors its misuse or exploitation for such purpose by employing such novel and ingenious methods.

11.6 Actually, such practice of engaging workman by separate but consecutive appointment orders of short duration with a view to opposing workman's claim about continuity in service by citing separate appointment orders giving artificial breaks between two phase of appointments is unjust and runs counter to the object of the provision and such practice has been repeatedly deprecated by Courts. By adopting such practice, the employer actually engages the workman continuously but with a view to establishing that the person was engaged intermittently and was not engaged continuously, separate orders for short duration arte issued and / or artificial breaks are given by issuing appointment letters for 3 months or 6 months duration or in some case 1 year tenure and in some cases appointment orders are issued for tenure for 29 days (then break of one or two days is given) and the same workman is again appointed. In such arrangement, the appointment which, in reality and in actual effect, is continuous, is artificially interjected by such facade or smoke screen of separate orders despite the fact that the work for which the person is engaged, continues and the need for engaging the workman also continues. Such action of engaging the workman in such manner and then abruptly discontinuing the person, would not fall within the purview of clause (bb) of Section 2(oo) and such practice cannot get protection of the principle of fixed term appointment recognised by clause (bb) of Section 2(oo)(bb).

11. In facts of the present case also and in view of continued appointment and discharge of services by the respondents workman the Court is of the view that case of the respondent will not be covered under Section 2(oo)(bb).

13. In the present case also since no contract document or appointment letter for determining terms of appointment, dismissal and discharge of the employee have been produced on record, the termination of the service of the petitioner are clearly voilative of Section 25-F of the I.D. Act, and issue No. 1 is accordingly decided in favour of the petitioner.

Issue No. 2

14. The petitioner has alleged that after termination of his service Smt. Kanchan was transferred from Delhi to this institution in the year 2015. He further alleged that service of Sh. Abhinash were regularised at institution of DAV Ambota. No specific evidence has been led on behalf of the petitioner to prove that the persons junior to him were retained in service violating the order of seniority. Due to lack of evidence it cannot be held that respondent have violated the provisions of the Section 25-G and 25-H of the I.D.Act, 1947.

Issue No. 3

15. Issue No.1 is proved in affirmative. The fact that the petitioner has terminated *w.e.f.* 01.04.2018 was violative of the provisions of Section 25-F of the Act. In these circumstances, the petitioner who had continuously worked with the respondent from September, 2012 to 31.03.2018 is clearly entitled for reinstatement of service along with seniority, continuity in service and other consequential benefits along lump-sum compensation a tune of Rs. 50,000/-. Issue No.3 is accordingly decided in the favour of the petitioner.

Issue No.4.

16. Maintainability of the petition was specific challenged on the ground of contractual nature of the employment of petitioner. No documents pertaining to the appointment and terms and conditions of employment of the petitioner could be produced by the respondent. In these circumstances, due to the continuous employment of the petitioner for period of more than 5 years without any breaks the present claim petition is maintainable.

Issue Nos. 5 & 6

17. The onus of proving these issues by the respondent. It has not been brought to the notice of this Court whether there was any necessary parties who had not been impleaded in this case by the claimant. Similarly there is nothing to show that the petitioner /claimant has suppressed any material fact from this Court. In fact, the allegations of misconduct have been made by the respondent but there is no documentary evidence in the form of show cause of notice, charge sheet or inquiry report justifying termination on ground of alleged misconduct. Hence, it is decided in favour of the petitioner.

RELIEF

18. In view of my findings on the issues no. 1 to 6 above the reference is decided to the effect that, the respondent is directed to re-instate the services of the petitioner *w.e.f.* 01.04.2018. The petitioner is also entitled for seniority, continuity in service with all consequential benefits. The respondent is also directed to pay lump-sum compensation to the tune of Rs.50,000/- to the petitioner in lieu of back wages. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :61/2017
Date of Institution : 21.2.2017
Date of Decision : 31.8.2024

Smt. Raksha Devi w/o Late Shri Ishwar Dass, r/o Ward No.8, College Road, P.O., Tehsil and District Kangra, H.P. ...*Petitioner.*

Versus

The Principal Dayanand Anglo Vedic College, Kangra, District Kangra, H.P.
...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.S.Randhawa, Ld. Adv.
For Respondent : Sh. Vinay Sharma, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner:

"Whether the demand of Smt. Raksha Devi w/o Late Shri Ishwar Dass, r/o Ward No.8, College Road, P.O., Tehsil & District Kangra, H.P. regarding regularization of her daily wages services as per Government Policy after completion of 8 years continuous service to be fulfilled by the Principal, Dayanand Anglo Vedic College Kangra, District Kangra, H.P., is legal and justified? If yes, to what relief, service benefits above workman is entitled to from the above employer/Management?"

2. The brief facts as mentioned in the statement of claim are that the petitioner was appointed as hostel attendant in the college of respondent at Kangra since the year 1993 on initial wages of Rs.300/- per month and thereafter in the year 1995 she was appointed as Peon and water carrier on wages of Rs.400/- per month. It is submitted that petitioner is working in the respondent college since the year 1993, however her salary and wages were increased from time to time. She attending her duty from 8.45 A.M. and leaves the office at 5 P.M. At the time of initial appointment of petitioner she was assured that after completion of 240 days her services would be regularized. She was also told that leaves during gazetted holidays including medical and casual leave will be given to her. It is alleged that despite these assurance no benefits of gazetted holiday and medical reimbursement was ever given to her. It is alleged that after the petitioner's appointment Beer Singh, Sat Pal, Padma Sohal and Suresh were regularized in services even though Roop Lal, was appointed on 19.7.1995 and Desh Raj was appointed on 1.8.1995 and they were regularized in the year 1997. The petitioner was debarred without assigning any reason from the same benefit. It is alleged that the juniors of the petitioner whose services have been regularized were getting salary of Rs.26,000/- per month whereas petitioner is being padi minimum wages. No steps were ever taken by the respondent to regularize the services of petitioner. During conciliation initiated before the Labour Officer Kangra at Dharamshala respondent despite giving assurance before the said authority did not regularize the services of the petitioner but the petitioner has completed more than 24 years services and also worked for 240 days in each year of services from 1993 onwards. Despite this she was not given the benefit of regularization nor the pay scale and allowances are

being paid at par with the counter parts working with the respondent. She has filed a complaint before Labour Officer, Dharamshala on 15.3.2013 and respondents were called by Conciliation Officer for reconciliation. Thereafter, the respondent has started giving minimum wages/salary of Rs.4500/- per month and also leaves for granted holidays. She further alleges that after getting the matter reconciled before Labour Officer Dharamshala respondent no.1 started giving threats to the petitioner that complaint filed before Labour Officer should be taken back otherwise petitioner would be facing consequences. According to petitioner she had been ignored with respect to her legitimate right by respondent despite working with the respondent for a continuous period of 24 years during her tenure she was not given any show cause notice censure etc. as her work and conduct was neat and clean without any stigma and allegations. She was never served any charge-sheet and there was no occasion for inquiry against her. All the benefits have been given to her juniors and she has been deprived or debarred from the benefits without any reason. The petitioner prayed that her services may be ordered to be regularized by the respondent with retrospective effect i.e. since the year 1993 with regular pay scale, allowances and other benefits which are available to the regular employees of the respondent.

3. The respondents no.1 and 2 by way of their reply raised preliminary objection qua maintainability. They asserted that the petitioner was never appointed as a hostel attendant she had never been working as hostel attendant or a daily wage peon. The petitioner in her legal notice dated 3.12.2011 herself mentioned that she had recruited as water carrier since 1995. Petitioner according to respondent was never appointed on regular basis and was not working on daily wages thus she was not entitled for regularization. As per policy of Class-IV employee in DAV College Managing Committee the regularization of employee depends upon existence of regular vacancy as well as keeping in view the financial position of funding institution where the employee is to be regularized. No regular appointment was made by the respondent due to weak financial condition. According to the respondents the petitioner was engaged as water carrier on fixed honorarium of Rs.300/- per month which was enhanced time to time. Averment was made that the petitioner has earlier filed claim with Labour Officer-*cum*-Conciliation Officer Kangra at Dharamshala and in lieu of conciliation proceedings the respondent was given arrears of honorarium as per Minimum Wages Act to the tune of Rs.27500/- *w.e.f.* 1.9.2012 to 31.7.2013 thereafter the petitioner is getting her honorarium as per Minimum Wages Act. The respondent denied that any junior employees' services have been regularized. Though it is asserted that Roop Lal was appointed as Peon-*cum*-Security Guard in January, 1992 against existing vacancy, Suresh Kumar was appointed Peon-*cum*-Driver against existing vacancy in January, 1992, Padma was also appointed as Clerk in the year 1992, Desh Raj was appointed as clerk on 13.10.1991, Rajinder Sohal was appointed as clerk on 24.10.1988 and as such according to the respondent all these employees were senior to the petitioner. According to the respondent petitioner is not entitled to any regularization benefit of pay scale and allowances at par with other employees. Respondent also alleged that the petitioner does not pay any regard to college staff and she is irregular and careless in performing her duties and the respondent no.1 had issued various show cause notices to her. On merits, the averments made in the petition have been denied. It is asserted that petitioner was appointed on fixed honorarium and she is not entitled for any service benefits including regularization of her services as prayed.

4. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the demand of petitioner regarding regularization of her daily wages services as per Government Policy after completion of 8 years continuous service to be fulfilled b respondent is/was proper and justified as alleged? ...OPP
(Issue framed at the time of Award/Order on the basis of the reference)

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP

3. Whether the petition is not maintainable in the present form as alleged? ...OPR

4. Whether the petitioner has suppressed the material facts from Court as alleged. If so its effect? ...OPR

5. Whether the petitioner is estopped from filing the present case as alleged? ...OPR

6. Whether the petitioner has not come to the Court with clean hands as alleged? ...OPR

Relief.

6. Petitioner Raksha Devi in order to prove her case produced her affidavit Ext. PW-1/A wherein she has reiterated the facts as stated in the petition. She has also produced on record copy of PAN Card Ext. PW1/B, copy of Aadhar Card Ext. PW1/C, copy of affidavit Mark-A, copy of notification dated 16.3.2018 Ext. PW1/D.

7. PW2 Shri Ravinder Kumar, Junior Assistant, DAV College Kangra has brought the record pertaining to respondent college. He has stated that DAV college is 95% grant aided college and follows the rules of State Government. He has produced on record the attendance of petitioner Ext. PW2/A, salary record Ext. PW2/B, monthly PF statement Ext. PW2/C. He has also produced a copy of appointment letter dated 28.11.1995 Ext. PW2/D, copy of appointment letter dated 26.7.1995 Ext. PW2/E, copy of appointment letter dated 26.6.1997 Ext. PW2/F.

8. One Ramesh Kumar, Safai Karamchari of DAV College have been examined by the petitioner as PW3 by way of affidavit Ext. PW-3/A. He has stated on oath that petitioner was working as hostel attendant since 1993 and in the year 1995 she started working as peon with the respondent college. He has stated that the record of the petitioner was sent to the respondent no.2 for the purpose of regularization however her file was lost.

9. Respondent examined Shri Baljeet Singh, the then Principal, DAV College, Kangra, Tehsil and District Kangra, H.P. who has reiterated the facts as stated in the reply by way of affidavit Ext. RW1/A. He has also produced on record copy of letter dated 13.5.2019 Ext. RW1/B, copy of letter dated 14.7.1995 Ext. RW1/C, copy of letter dated 20.7.1995 Ext. RW1/D, copy of letter dated 24.6.1997 Ext. RW1/E, copy of letter dated 26.7.1995 Ext. RW1/F, copy of letter dated 2.5.1996 Ext. RW1/G and copy of letter dated 28.11.1997 Ext. RW1/H.

10. I have heard the learned Counsel for both the parties at length and records perused.

11. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 :Yes
Issue No.2 :decided accordingly
Issue No.3 : No

Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

12. Petitioner Raksha Devi has asserted in her deposition that she was appointed as hostel attendant by the respondent in the year 1993 at wages of Rs.300/- per month and *w.e.f.* the year 1995 she was appointed as peon and water carrier. Since 1993 she is continuously attending her duties from 8.45 AM to 5 PM. PW2 Ravinder Kumar, Junior Assistant of DAV College stated that DAV college is 95% grant aided college and follows the rules of State Government. Though he has expressed is ignorance to the suggestion that petitioner was appointed as peon since 1995 but he has stated that presently petitioner is working on the post of peon and not yet regularized. He has stated that Desh Raj was appointed as a clerk in the year 1993 and regularized in 1992, Roop Lal was appointed as peon-*cum*-Security Guard in the year 1995 and made regular in 1995. Bir Singh is marking his attendance in the college since 1997 and he has been regularized in the year 2000. Padma worked as lab attendant since 1989 has been regularized in 1997. He has also mentioned that appointment of petitioner and other workmen has been submitted in Delhi Management office. He later on produced the appointment letters of Padma, Rajinder Singh, Desh Raj, Roop Lal and Bir Singh but no appointment letter pertaining to the petitioner was produced. He mentioned that these persons have been appointed under self finance local scheme. He mentioned in his cross-examination that the petitioner was not appointed under sanctioned post.

13. PW3 Ramesh Kumar who is regular safai karamchari of DAV College has also stated that petitioner is working as hostel attendant since 1993 and as peon since 1995 still she has not been made regular till date. He further states that record of petitioner was sent to respondent no.2 for the purpose of regularization along with the record of Padma, Suresh, Rajinder, Roop Lal but it was informed by the respondent that the file of petitioner was misplaced. The respondents had assured that they will regularize the services of petitioner but she had not been made regular employee till date. He denied in his cross-examination that Raksha Devi was never appointed as a peon. RW1 Shri Baljieet Singh, Principal of DAV College has stated that respondents did not have any policy of regularization of any employee, however appointment is made against sanctioned post. He admitted that Desh Raj was appointed on adhoc basis in 1992 and regularized on 1.8.1995, Suresh was kept as driver in the year 1991 and his regular appointment was made on 1.7.1995, Roop Lal was kept as peon-*cum*-security guard in 1991 and established on regular basis on 1.7.1995, Rajinder was appointed as clerk in 1988 and his regular appointment was made on 1.8.1995. Bir Singh was appointed as peon on 18.6.1997 on regular basis.

14. With regard to petitioner he has asserted that she has been working as water carrier and not in peon category but she was kept as water carrier by stop gap arrangement. He however admitted that petitioner marks her attendance along with other regular employees and her payment was made directly by the college. It is pertinent to mention here that it has not been denied that petitioner is working in the college from 8.45 AM till 5 PM of all working days.

15. Learned counsel for the respondents have vehemently argued that petitioner cannot claim regularization and she was not appointed against sanctioned post. In order to led strength to the said arguments the learned counsel has relied upon the ratio laid down by Hon'ble Supreme

Court in **Vibhuti Shankar Pandey versus The State of Madhya Pradesh, 2023 Live Law (SC)91** has held in para no.3 as follows:—

> ".....The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in Secretary, State of **Karnataka and Ors. v. Umadevi and Ors.,** as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.....".

16. In the circumstances of the present case however some facts need to be considered carefully. Respondents have not produced any schedule or list of sanctioned post of respondents from the year 1997 till date. That the respondent college 95% grant in aid institution is not a disputed fact. The petitioner was admittedly appointed in 1993. There is no appointment letter on record and no document produced by respondent to show that petitioner was merely a part time water carrier. The oral evidence produced by the petitioner including statement of PW2 Ravinder Kumar, Junior Assistant in the office of the respondent shows that the petitioner is presently working on post of peon. The assertions made by RW1 Baljeet Singh that the petitioner is merely working as part time water carrier by way of stop gap arrangement is falsified from the attendance register Ext. PW2/A as well as statement of PW2, Junior Assistant from the office of respondents. Section 2(ra) of the Industrial Disputes Act, 1947 describes the unfair labour practices as follows:—

> (ra)["unfair labour practice" means any of the practices specified in the Fifth Schedule; *[Inserted by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).]*(i)such allowances (including dearness allowance) as the workman is for the time being entitled to;
>
> (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
>
> (iii) any travelling concession;](iv)[any commission payable on the promotion of sales or business or both;] *[Inserted by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).]*

17. Rule 10 of the Vth Schedule to the Act provides as follows:—

> (10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

18. The petitioner is working as a peon since 1993 and record reveals that no minimum wages were paid to the petitioner until after the year 2013. The conduct of respondents in utilizing the services of the petitioner on temporary basis and on wages less than the minimum wages clearly amounts to unfair labour practices. As admitted by RW1 Baljeet Singh that there is no specific policy of regularization for Class-IV employee of the respondents. Record reveals that the case of regularization was sent to respondent no.2 even after adhoc appointment of employee with or without sanctioned post. Thus the claim of respondent that petitioner was not appointed on sanctioned post does not appear to be genuine. No document is produced to prove that Padma Ram, Desh Raj and Roop Lal were appointed on pre sanctioned post and PW2 stated that they were appointed on self finance local scheme. It appears that despite long period of continuous service deliberately no efforts were made to send the case of the petitioner for the purpose of regular

appointment which is a prerogative of respondents no.1 and 2. The conduct of respondents no.1 and 2 appears to be discriminatory violative of provisions of the Industrial Disputes Act and whole unjustified. The record itself reveals that the services of the petitioner were being utilized by the respondent for the period of more than 24 years as a temporary employee despite the fact that she was working throughout the office hours. This conduct of the respondent was with sole purpose of depriving the petitioner of her regular status. No reason has been cited as to why the case of the petitioner was not considered for the purpose of regularization. As already mentioned above, the respondents have not proved any record to show that the persons whose services have been regularized on initial appointment on a sanctioned post. Thus claim of the petitioner regarding regularization of daily wage services after completion of 8 years is legal and justified and hence issue no.1 is accordingly decided in the favour of petitioner.

Issue No.2

19. It is not disputed fact that the petitioner had started working with the respondent since 1993. It is also established that she was working on post of peon since 1995 till date. Petitioner was not even paid the minimum wages upto the year 2012 neither she was held entitled for any gazetted holidays. Subsequent to the year 2013 she is being paid minimum wages by the respondent on the direction of Labour-*cum*-Conciliation Officer, Dharamshala. It is also proved that respondents have deliberately and in a discriminatory manner deprived the petitioner of her right to regularization on the similar terms under which other counter parts of the petitioner were subjected to regularization. In these circumstances and considering the terms of record the petitioner is held entitled for the regularization of her services after the date of completion of 8 years of continuous service from the initial appointment in the year 1993. She is also held entitled for all the consequential service benefits. With respect to the non payment of minimum wages and following unfair labour practices by the respondent the petitioner is also held entitled for compensation of Rs.50,000/- in lump sum. Issue no.2 is accordingly decided in the favour of the petitioner.

Issues no. 3 to 6

20. The onus of proving these issues are on the respondent. The primary contention of the respondent that the petitioner was not appointed with respect to any sanctioned post no documentary evidence in this regard could be produced by the respondent while it was proved from overwhelming evidence that the petitioner had continued in service from the year 1993 till date and she was deprived of services benefits which were made available to her counter parts. Unlike the allegations made by the respondent, the respondent could not produce any record pertaining to any disciplinary action or an inquiry against the petitioner during the period of her services merely production of show cause notice would not be sufficient to establish that petitioner was not performing her duties in proper manner. There is nothing on record to show that the petition is not maintainable and that petitioner is estopped to file claim petition from her act and conduct and/or she has not come to the court with clean hands as well as suppressed the material facts, hence issues no. 3 to 6 are accordingly decided in the favour of petitioner.

RELIEF

21. In view of my discussion on the issues no. 1 to 6 the claim petition succeeds and is partly allowed. The petitioner is held entitled for the regularization of her services after the date of completion of 8 years of continuous service from the initial appointment in the year 1993 as well as all the consequential service benefits along with compensation to the tune of Rs.50,000/- along with interest @ 6%. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :123/2019
Date of Institution : 15.11.2019
Date of Decision : 31.8.2024

Shri Kashmir Singh s/o Shri Devi Singh, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P.

...Petitioner.

Versus

The Executive Engineer, Electrical Sub Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. *...Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.
For Respondent : Sh. Anand Sharma, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner:

I. "Whether termination of daily wages services of Shri Kashmir Singh s/o Shri Devi Singh, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. by the Executive Engineer, Electrical Sub Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. *w.e.f.* 01-04-2001, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947".

II. "Whether the dispute raised by the petitioner Shri Kashmir Singh s/o Shri Devi Singh, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. regarding his illegal termination of daily wages services *w.e.f.* 01-04-2001 *vide* demand notice 09-07-2016 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he is entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis during October, 1998 by the respondent Board till 31.3.2001. It is alleged that the services of the petitioner were terminated orally in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner, he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. The petitioner time and again visited office of the respondent making a prayer for his reinstatement and consequential benefits but despite oral assurances he was not reinstated. It is asserted that when the petitioner come to know from reliable resources during May, 2009 that the respondent Board has retained the services of junior persons he (petitioner) had submitted demand notice on 3.6.2009 to the official of the Board as well as to the Labour-*cum*-Conciliation Officer, Mandi, however conciliation proceedings were failed and Labour Commissioner Shimla vide order dated 24.5.2010 has refused to send the matter to this court on the ground that petitioner did not complete 240 days in the preceding 12 calendar months prior to the date of termination of his services and also on the ground of delay. When the respondent did not accede to the request of the petitioner, he preferred writ petition before the Hon'ble High Court of Himachal Pradesh wherein Hon'ble High Court has passed a common judgment on 10.4.2012. The petitioner again approached the Hon'ble High Court of H.P. *vide* CWP No.6238/2014 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner has submitted detailed application/representation dated 19.6.2016 but the same was considered by the Labour Commissioner and he (petitioner) was told to file the same in the form of demand notice however the petitioner had again filed a demand notice on 9.7.2016 before Labour Commissioner Shimla, but said authority has not considered the case of the petitioner and same was rejected as well refused to send reference to this court. Thereafter, petitioner had assailed the order by way of CWP No.2195/2018 before Hon'ble High Court and the same was decided on 3.1.2019. It is further submitted that on 30.4.2019 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No.1675/2019 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 7.8.2019. Whereby the Hon'ble High Court was pleased to pass and order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part and as to whether the petitioner has completed 240 days in a period of 12 calendar months or not.

3. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act, he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour i.e. consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 and 2 by way of reply raised preliminary objections qua cause of action, locus standi, suppression of material facts and the claim of petitioner being barred by principle of delay and laches. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 18.9.2000 to 31.3.2001 with lots of break at his own. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work

available with the replying respondents and thus the services of the petitioner were not required. It is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year and abandoned the services on his own. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of daily wages services of the petitioner by the respondent *w.e.f.* 01.04.2001 is/was illegal and unjustified as alleged? ...OPP

2. If issue no.1 is proved in affirmative, to what benefit the petitioner is entitled to? ..OPP

3. Whether the dispute raised by the petitioner regarding his illegal termination *w.e.f.* 01.4.2001 *vide* demand notice dated 9.7.2016 is suffered from the vice of delay and laches. If so, its effect? ...OPP

4. Whether the petitioner has no *locus standi* to file the present case as alleged? ...OPR

5. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court, as alleged? ...OPR

6. Whether the claim petition is time barred, as alleged?

Relief.

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record demand notice Ext. P1, copy of letter dated 24.5.2010 Ext. P2, copy of judgment of Hon'ble High Court Ext. P3, request for re-engagement Ext. P4, information under RTI Ext. P5, copy of letter dated 19.7.2014 regarding Advertisement Ext. P6, copy of order of Deputy Labour Commissioner Ext. P7, copy of order of Hon'ble High Court Ext. P8, copy of letter to Labour Commissioner Ext. P9, copy of reply to representation Ext. P10, copy of order dated April, 2019 Ext. P11, copy of application Ext. P12, copy judgment of Hon'ble High Court Ext. P13 and copy of another judgment of Hon'ble High Court Ext. P14.

8. Respondents have examined Shri Mohit Tandon, Senior Executive Engineer, HPSEBL, Sunder Nagar on oath by way affidavit Ext. RW1/A, he also produced on record mandays chart Ext. RW1/B, copy of demand notice dated 9.7.2016 Ex. RW1/C, copy of reply to demand notice dated nil Ext. RW1/D, copy of demand notice dated 3.6.2009 Ext. RW1/E, copy of reply dated nil Ext. RW1/F, copy of order dated 30.4.2019 Ex. RW1/G.

9. I have heard the learned Counsel for both the parties at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Yes
Issue No.6	: Yes
Relief.	: Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 & 3

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1675 of 2019 as follows:—

> ".....11. Therefore, the writ petition is allowed. The impugned order is set aside and a direction is issued to the Government to make a Reference of the dispute to the Labour Court. It is open to the Government to include a question with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches".

13. Thus this court had primary point for consideration with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis in October, 1998 by the respondent Board till 31.3.2001. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services *w.e.f.* 18.9.2000 to 31.3.2001 as a casual labourer. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Mohit Tandon, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from October, 1998 to 31.3.2001. The mandays chart Ext. RW1/B has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi(DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no.6,8,9,10 and 11 as follows:—

> "6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this

and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the nonproduction of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best

evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165) it was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat v. Dehyabhai Amarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (*supra*) was reiterated.

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from October, 1998 till 31.3.2001. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. RW1/B which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere nonproduction of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court 9 under Article 226 of the

Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year 2001. It is hence established that disengagement of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 2 are decided in favour of the respondent.

Issues No. 3 and 6

19. The dispute was raised by the petitioner regarding his termination *vide* demand notice dated 9.7.2016. Prior to this as pleaded by the petitioner he has time and again visited the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service, he was constrained to file CWP No.2194/2018 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court *vide* CWP No.1675/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

20. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

"8. Hon'ble Apex Court in case titled Prabhakar v. Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief.

In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his

right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

21. In the circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested them to reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2018 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no.3 and 6 are decided in favour of the petitioner.

Issues No. 4 and 5

22. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petitioner had no locus standi to prefer the claim petition moreover considering the number of days which are calculated on 136 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no.4 to 5 are decided in favour of the respondent.

RELIEF

23. In view of my discussion on the issues no. 1 to 6 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

24. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 100/2019
Date of Institution : 17.9.2019
Date of Decision : 31.8.2024

Shri Narayan Singh s/o Shri Om Chand, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Electrical Sub Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. ...*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.
For Respondent : Sh. Anand Sharma, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner:

I. "Whether termination of daily wages services of Shri Narayan Singh s/o Shri Om Chand, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. by the Executive Engineer, Electrical Sub Division, H.P.S.E.B. Ltd. Sunder Nagar, District Mandi, H.P. *w.e.f.* 01-04-2001, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947".

II. "Whether the dispute raised by the petitioner Shri Narayan Singh s/o shri Om Chand, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P regarding his illegal termination of daily wages services *w.e.f.* 01-04-2001 vide demand notice 09-07-2016 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he is entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis in January, 2000 by the respondent Board till 31.3.2001. It is alleged that the services of the petitioner were terminated orally in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not

permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner, he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. The petitioner time and again visited office of the respondent making a prayer for his reinstatement and consequential benefits but despite oral assurances he was not reinstated. It is asserted that when the petitioner come to know from reliable resources during May, 2009 that the respondent Board has retained the services of junior persons he (petitioner) had submitted demand notice on 3.6.2009 to the official of the Board as well as to the Labour-*cum*-Conciliation Officer, Mandi, however conciliation proceedinigs were failed and Labour Commissioner Shimla *vide* order dated 24.5.2010 has refused to send the matter to this court on the ground that petitioner did not complete 240 days in the preceding 12 calendar months prior to the date of termination of his services and also on the ground of delay. When the respondent did not accede to the request of the petitioner, he preferred writ petition before the Hon'ble High Court of Himachal Pradesh wherein Hon'ble High Court has passed a common judgment on 10.4.2012. The petitioner again approached the Hon'ble High Court of H.P. *vide* CWP No.6238/2014 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner has submitted detailed application/representation dated 19.6.2016 but the same was considered by the Labour Commissioner and he (petitioner) was told to file the same in the form of demand notice however the petitioner had again filed a demand notice on 9.7.2016 before Labour Commissioner Shimla, but said authority has not considered the case of the petitioner and same was rejected as well refused to send reference to this court. Thereafter, petitioner had assailed the order by way of CWP No.2194/2018 before Hon'ble High Court and the same was decided on 3.1.2019. It is further submitted that on 30.4.2019 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No.1659/2019 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 8.8.2019. Whereby the Hon'ble High Court was pleased to pass and order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part and as to whether the petitioner has completed 240 days in a period of 12 calendar months or not.

3. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act, he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour i.e. consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 and 2 by way of reply raised preliminary objections *qua* cause of action, locus standi, suppression of material facts and the claim of petitioner being barred by principle of delay and laches. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 12.12.2000 to 31.3.2001 and had worked for 186 days with lots of break at his own. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work available with the replying respondents and thus the services of the petitioner were not required. It is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from

unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year and abandoned the services on his own. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of daily wages services of the petitioner by the respondent *w.e.f.* 01.04.2001 is/was illegal and unjustified, as alleged? ..OPP

2. Whether the industrial dispute raised by the petitioner *vide* demand notice dated 09-07-2016 *qua* his illegal termination of service *w.e.f.* 01.04.2001 by the respondent suffers from the vice delay and laches, as alleged? ..OPP

3. If issues no.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? ..OPP

4. Whether the claim petition is not maintainable, as alleged? ..OPR

5. Whether the petitioner has no cause of action and *locus standi* to file the present case, as alleged? ..OPR

6. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged. If so, its effect? ...OPR

7. Relief.

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record copy of judgment dated 8.8.2019 Ext. PW1/B, demand notice Ext. PW1/C, demand notice dated 24th May, 2010 Ext. PW1/D, another demand notice dated 9.7.2016 Ext. PW1/E, cop of order dated January 2018 Ext. PW1/F, judgment dated 3.1.2019 Ext. PW1/G, letter of petitioner Ext. PW1/H, reply to representation Ext. PW1/J, order dated April, 2019 Ext. PW1/K, office order dated 5.3.2018 Ext. PW1/L, reply to the representation Ext. PW1/M, demand notice dated 3.6.2009 Ext. PW1/N, copy of endorsement dated 27.6.2009 Ext. PW1/O, copy of letter dated 10th August 2009 Ext. PW1/P, reply to demand notice Ext. PW1/Q, copy of seniority list Ext. PW1/R, copy of letter dated 11.7.2007 Ext. PW1/S and copy of order dated 13.6.2007 Ext. PW1/T. The learned Counsel for the petitioner has also produced on record application to Labour Commissioner Ext. P1, representation Ext. P2, information under RTI Ext. P3, demand notice dated 24.5.2010 Ext. P3A, request for re-engagement Ext. P4, application to Labour Commissioner Ext. P5, copy of order of Hon'ble High Court Ext. P6, copy of demand notice dated 24.5.2010 Ext. P7 and copy of another demand notice Ext. P8.

8. Respondents have examined Shri Mohit Tandon, Senior Executive Engineer, HPSEBL, Sunder Nagar on oath by way affidavit Ext. RW1/A, he also produced on record mandays chart

Ext. RW1/B, copy of judgment dated 10.4.2012 Ex. RW1/C, copy of demand notice dated 3.6.2009 Ext.RW1/D, copy of reply to demand notice dated nil Ext. RW1/E.

9. I have heard the learned Counsel for both the parties at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:No
Issue No.2	:No
Issue No.3	:Decided accordingly
Issue No.4	:Yes
Issue No.5	:Yes
Issue No.6	:Yes
Relief.	:Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1&3

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1659 of 2019 as follows:—

> ".....12. Therefore, the writ petition is allowed. The impugned order is set aside and a direction is issued to the Government to make a Reference of the dispute to the Labour Court. It is open to the Government to include a question with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches".

13. Thus this court had primary point for consideration with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis in January, 2000 by the respondent Board till 31.3.2001. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services *w.e.f.* 12.12.2000 to 31.3.2001 as a casual labourer. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Mohit Tandon, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from the year 2000 to 31.3.2001. The mandays chart Ext. RW1/B has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi (DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no.6,8,9,10 and 11 as follows:—

"6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal

Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the nonproduction of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165) it was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat v. Dehyabhai Amarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (supra) was reiterated.

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from January, 2000 till 31.3.2001. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. RW1/B which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden

placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere nonproduction of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court 9 under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year 2001. It is hence established that disengagement of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 3 are decided in favour of the respondents.

Issue no. 2

19. The dispute was raised by the petitioner regarding his termination *vide* demand notice dated 9.7.2016. Prior to this as pleaded by the petitioner he has time and again visited the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service, he was constrained to file CWP No.2194/2018 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court vide CWP No.1659/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

20. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

"8. Hon'ble Apex Court in case titled Prabhakar v. Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer

remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine *qua* non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the cir*cum*stances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the

effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

21. In the circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested them to reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2018 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no.2 is decided in favour of the petitioner.

Issues No.4 to 6

22. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petition is not maintainable and the petitioner had no locus standi to prefer the claim petition moreover considering the number of days which are calculated on 135 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no.4 to 6 are decided in favour of the respondent.

RELIEF

23. In view of my discussion on the issues no. 1 to 6 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

24. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :101/2019
Date of Institution : 17.9.2019
Date of Decision : 31.8.2024

Shri Arjun Singh s/o Shri Todar Singh, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Electrical Sub Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. ...*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.
For Respondent : Sh. Anand Sharma, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner:

I. "Whether termination of daily wages services of Shri Arjun Singh s/o Shri Todar Singh, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. by the Executive Engineer, Electrical Sub Division, H.P.S.E.B. Ltd. Sunder Nagar, District Mandi, H.P. *w.e.f.* 01-04-2001, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947".

II. "Whether the dispute raised by the petitioner Shri Arjun Singh s/o Shri Todar Singh, r/o Village Chakrari, P.O. Barsu, Tehsil Sadar, District Mandi, H.P. regarding his illegal termination of daily wages services *w.e.f.* 01-04-2001 *vide* demand notice 09-07-2016 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he is entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis in January, 2000 by the respondent Board till 31.3.2001. It is alleged that the services of the petitioner were terminated orally in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner, he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. The petitioner time and again visited office of the respondent making a prayer for his reinstatement and consequential benefits but despite oral assurances he was not reinstated. It is asserted that when the petitioner come to know from reliable resources during May, 2009 that the respondent Board has retained the services of junior persons he (petitioner) had submitted demand notice on 3.6.2009 to the official of the Board as well as to the Labour-*cum*-Conciliation Officer, Mandi, however conciliation proceedinigs were failed and Labour Commissioner Shimla vide order dated 24.5.2010 has refused to send the matter to this court on the ground that petitioner did not complete 240 days in the preceding 12 calendar months prior to the date of termination of his services and also on the ground of delay. When the respondent did not accede to the request of the petitioner, he preferred writ petition before the Hon'ble High Court of Himachal Pradesh wherein Hon'ble High Court has passed a common judgment on 10.4.2012. The petitioner again approached the Hon'ble High Court of H.P. *vide* CWP No.6238/2014 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner has submitted detailed application/representation dated 19.6.2016 but the same was considered by the Labour Commissioner and he (petitioner) was told to file the same in the form of demand notice however the petitioner had again filed a demand notice on 9.7.2016 before Labour Commissioner Shimla, but said authority has not considered the case of the petitioner and same was rejected as well refused to send reference to this court. Thereafter, petitioner had assailed the order by way of CWP No.2194/2018 before Hon'ble High Court and the same was decided on 3.1.2019. It is further submitted that on 30.4.2019 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No.1661/2019 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 8.8.2019. Whereby the Hon'ble High Court was pleased to pass and order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part.

3. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act, he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour *i.e.* consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 and 2 by way of reply raised preliminary objections qua cause of action, *locus standi*, suppression of material facts and the claim of petitioner being barred by principle of delay and laches. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 4.10.2000 to 31.3.2001 with lots of break at his own. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work available with the replying respondents and thus the services of the petitioner were not required. It

is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year and abandoned the services on his own. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of daily wages services of the petitioner by the respondent *w.e.f.* 01.04.2001 is/was illegal and unjustified, as alleged? ...OPP

2. Whether the industrial dispute raised by the petitioner vide demand notice dated 09-07-2016 *qua* his illegal termination of service *w.e.f.* 01.04.2001 by the respondent suffers from the vice delay and laches, as alleged? ...OPP

3. If issues no.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? ...OPP

4. Whether the claim petition is not maintainable, as alleged? ...OPR

5. Whether the petitioner has no cause of action and *locus standi* to file the present case, as alleged? ...OPR

6. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged. If so, its effect? ? ...OPR

7. Relief.

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record copy of judgment dated 8.8.2019 Ext. PW1/B, demand notice dated 24th May, 2010 Ext. PW1/C, application dated 3.6.2009 Ext. PW1/D, copy of demand notice Ext. PW1/E, reply to the demand notice Ext. PW1/F, copy of order Ext. PW1/G, another copy of demand notice Ext. PW1/H, copy of reply to demand notice Ext. PW1/J, copy of letter dated 20.1.2023 Ext. PW1/K, copy of information under RTI Act Ext. PW1/L, copy of letter dated 19.7.2014 Ext. PW1/M, copy of demand notice Ext. PW1/N, letter of petitioner Ext. PW1/O, reply to representation Ext. PW1/P, copy of order dated 30th April, 2019 Ext. PW1/Q, copy of letter dated 11.7.2007 Ext. PW1/R, copy of judgment dated 13.6.2007 Ext. PW1/S, copy of seniority list Ext. PW1/T, copy of mandays chart of Shri Karam Singh Ext. PW1/U, reply to representation Ext. PW1/V, copy of demand notice Ext. PW1/W and copy of judgment dated 1.1.2019 Ext. PW1/X.

8. Respondents have examined Shri Mohit Tandon, Senior Executive Engineer, HPSEBL, Sunder Nagar on oath by way affidavit Ext. RW1/A, he also produced on record mandays chart Ext. RW1/B and copy of judgment dated 10.4.2012 Ext. RW1/C.

9. I have heard the learned Counsel for both the parties at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:No
Issue No.2	:No
Issue No.3	:Decided accordingly
Issue No.4	:Yes
Issue No.5	:Yes
Issue No.6	:Yes
Relief.	: Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1&3

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1661 of 2019 as follows:—

> ".....12. Therefore, the writ petition is allowed. The impugned order is set aside and a direction is issued to the Government to make a Reference of the dispute to the Labour Court. It is open to the Government to include a question with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches".

13. Thus this court had primary point for consideration with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis in January, 2000 by the respondent Board till 31.3.2001. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services *w.e.f.* 4.10.2000 to 31.3.2001 as a casual labourer. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Mohit Tandon, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from January, 2000 to March, 2001. The mandays chart Ext. RW1/B has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi(DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no.6,8,9,10 and 11 as follows:—

> "6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that

the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the nonproduction of certain relevant documents. This is what this Court had to say in that

regard: "A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165) it was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat v. Dehyabhai Amarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (*supra*) was reiterated".

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from January, 2000 till 31.3.2001. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. RW1/B which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere nonproduction of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the

tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court 9 under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year 2001. It is hence established that disengagement of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 3 are decided in favour of the respondents.

Issue no. 2

19. The dispute was raised by the petitioner regarding his termination *vide* demand notice dated 8.7.2016. Prior to this as pleaded by the petitioner he has time and again visited the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service, he was constrained to file CWP No.2194/2018 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court vide CWP No.1661/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

20. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

"8. Hon'ble Apex Court in case titled Prabhakar v. Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly,

it is always for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the ci*r*cumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or

there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such cir*cum*stances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

21. In the circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested them to reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2018 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no.2 is decided in favour of the petitioner.

Issues No.4 to 6

22. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petition is not maintainable and the petitioner had no locus standi to prefer the claim petition moreover considering the number of days which are calculated on 135 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no.4 to 6 are decided in favour of the respondent.

RELIEF

23. In view of my discussion on the issues no. 1 to 6 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

24. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :102/2019
Date of Institution : 17.9.2019
Date of Decision : 31.8.2024

Shri Ghanshyam s/o Shri Krishan Lal, r/o Village Kathalag, P.O. Padhion, Tehsil Sadar, District Mandi, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Electrical Sub Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Neeraj Bhadnagar, Ld. Adv.
For Respondent : Sh. Anand Sharma, Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Government/Deputy Labour Commissioner:

I. "Whether termination of daily wages services of Shri Ghanshyam s/o Shri Krishan Lal, r/o Village Kathalag, P.O. Padhion, Tehsil Sadar, District Mandi, H.P. by the Executive Engineer, Electrical Sub Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. *w.e.f.* 01-04-2001, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of service benefits, back wages, seniority and compensation the above workman is entitled to under the Industrial Disputes Act, 1947".

II. "Whether the dispute raised by the petitioner Shri Ghanshyam s/o Shri Krishan Lal, r/o Village Kathalag, P.O. Padhion, Tehsil Sadar, District Mandi, H.P. regarding his illegal termination of daily wages services *w.e.f.* 01-04-2001 *vide* demand notice 09-07-2009 suffers from long delay and laches? If yes, what are its consequences? If not, what kind of relief he is entitled to?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as a beldar on daily wage basis *w.e.f.* 1.10.1998 by the respondent Board till 31.3.2001. It is alleged that the services of the petitioner were terminated orally in violation of Sections 25-F, 25-G and 25-H of the Industrial disputes Act,1947 (hereinafter referred to as the 'the Act' for short) which is not

permissible under the law. The aforesaid action of the respondent is alleged to be arbitrary and illegal. According to petitioner, he time and again visited office of respondent with the prayer, that since he has worked on daily wage basis he should be reinstated in service with all consequential benefits but the authority did not pay heed to his request. The petitioner time and again visited office of the respondent making a prayer for his reinstatement and consequential benefits but despite oral assurances he was not reinstated. It is asserted that when the petitioner come to know from reliable resources during May, 2009 that the respondent Board has retained the services of junior persons he (petitioner) had submitted demand notice on 3.6.2009 to the official of the Board as well as to the Labour-*cum*-Conciliation Officer, Mandi, however conciliation proceedings were failed and Labour Commissioner Shimla *vide* order dated 24.5.2010 has refused to send the matter to this court on the ground that petitioner did not complete 240 days in the preceding 12 calendar months prior to the date of termination of his services and also on the ground of delay. When the respondent did not accede to the request of the petitioner, he preferred writ petition before the Hon'ble High Court of Himachal Pradesh wherein Hon'ble High Court has passed a common judgment on 10.4.2012. The petitioner again approached the Hon'ble High Court of H.P. vide CWP No.6238/2014 which was dismissed and withdrawn on 11.4.2016 with liberty to seek appropriate remedy. Thereafter in the light of liberty granted by Hon'ble High Court the petitioner has submitted detailed application/representation dated 19.6.2016 but the same was considered by the Labour Commissioner and he (petitioner) was told to file the same in the form of demand notice however the petitioner had again filed a demand notice on 9.7.2016 before Labour Commissioner Shimla, but said authority has not considered the case of the petitioner and same was rejected as well refused to send reference to this court. Thereafter, petitioner had assailed the order by way of CWP No.2197/2018 before Hon'ble High Court and the same was decided on 3.1.2019. It is further submitted that on 30.4.2019 Labour Commissioner passed an order whereby the claim of the petitioner was rejected and the petitioner filed CWP No.1660/2019 before Hon'ble High Court of H.P. which was decided in favour of the petitioner on 8.8.2019. Whereby the Hon'ble High Court was pleased to pass and order whereby the appropriate Government was directed to make reference of dispute including the question as to whether the petitioner is entitled to any relief and with reference to delay and laches on his part and as to whether the petitioner has completed 240 days in a period of 12 calendar months or not.

3. Thus the petitioner has prayed that since his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act, he may be reinstated in service with full back wages holding termination order as wrong and illegal. He also prayed that benefits of period during which he remained under termination may be awarded in his favour i.e. consequential service benefits, seniority, arrears of difference of wages etc.

4. Respondents no.1 and 2 by way of reply raised preliminary objections qua cause of action, locus standi, suppression of material facts and the claim of petitioner being barred by principle of delay and laches. It was asserted that there was no industrial dispute between the petitioner and respondents as petitioner never completed the requisite number of 240 days of work in any calendar year. The petitioner did not fall within the definition of temporary workman as per provisions of the Act. It was asserted in reply that the petitioner rendered his service *w.e.f.* 15.10.1998 to 31.3.2001 and had worked for 186 days with lots of break at his own. The copy of mandays chart pertaining to the petitioner have been produced and it is asserted that petitioner left the job out of his own sweet will without any notice and intimation to the respondents. Thus petitioner did not complete 240 days in a calendar year consequently no industrial dispute existed between the parties. Respondents denied terminating the services of the petitioner and also asserted that at present there was no work available with the replying respondents and thus the services of the petitioner were not required. It is also alleged that petitioner remained in deep slumber for number of years and approached this Tribunal at belated stage. Thus claim of the petitioner was totally barred by limitation. The claim petition/demand notice is alleged to be suffering from

unwarranted delay and laches and hence not maintainable. The other averments leading to litigation raised by the petitioner before the Hon'ble High Court and consequent reference of dispute made by the appropriate government have not been denied though it is time and again reiterated that the petitioner had not complete mandatory 240 days of work in any calendar year and abandoned the services on his own. Other averments made in the petition have denied and it was prayed that the claim petition be dismissed.

5. In rejoinder the preliminary objections raised by the respondents were denied and the facts stated in the claim petition were reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of daily wages services of the petitioner by the respondent *w.e.f.* 01.04.2001 is/was illegal and unjustified, as alleged? ...OPP

2. Whether the industrial dispute raised by the petitioner *vide* demand notice dated 09-07-2009 *qua* his illegal termination of service *w.e.f.* 01.04.2001 by the respondent suffers from the vice delay and laches, as alleged? ...OPP

3. If issues no.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? ...OPP

4. Whether the claim petition is not maintainable, as alleged? ...OPR

5. Whether the petitioner has no cause of action and *locus standi* to file the present case, as alleged? ...OPR

6. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged. If so, its effect? ? ...OPR

7. Relief.

7. The petitioner in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the averments made in the pleadings. Petitioner also produced on record judgement dated 8.8.2019 Ext.PW1/B, reply to demand notice Ext. PW1/C, another copy of judgment dated 1.1.2009 Ext. PW1/D, demand notice Ext.PW1/E, judgment dated 28.8.2014 Ext. PW1/F, certificate of the petitioner Ext. PW1/G, matriculation certificate of petitioner Ext. PW1/H, application of petitioner Ext. PW1/J and application Ext. PW1/K. The learned Counsel for the petitioner has also produced on record demand notice Ext.P1, reply Ext. P2, reference Ext. P3, copy of judgment dated 10th April, 2012 Ext. P4, request for engagement Ext. P5, information under RTI Ext. P6 and P7, demand notice Ext. P8, reference dated 6 January 2018 Ext. P9, copy of judgment dated 1.1.2019 Ext. P10, another copy of judgment dated 3.8.2019 Ext.P11, application to Labour Commissioner Ext. P12 and reply to demand notice Ext. P13.

8. Respondents have examined Shri Mohit Tandon, Senior Executive Engineer, HPSEBL, Sunder Nagar on oath by way affidavit Ext. RW1/A, he also produced on record mandays chart Ext. RW1/B, copy of demand notice dated 9.7.2009 Ext. RW1/C and copy of judgment Ext. RW1/D.

9. I have heard the learned Counsel for both the parties at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:No
Issue No.2	:No
Issue No.3	:Decided
Issue No.4	:Yes
Issue No.5	:Yes
Issue No.6	:Yes
Relief.	: Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 & 3

11. Both these issues are taken up together for the purpose of adjudication.

12. At the very outset it is important to recollect the important part of the judgment passed by Hon'ble High Court of H.P. in CWP No.1660 of 2019 as follows:—

> ".....12. Therefore, the writ petition is allowed. The impugned order is set aside and a direction is issued to the Government to make a Reference of the dispute to the Labour Court. It is open to the Government to include a question with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches".

13. Thus this court had primary point for consideration with regard to any delay and laches on the part of the petitioner and also the question as to what relief the petitioner would be entitled in the event of his success, in the light of the allegations of delay and laches.

14. The petitioner has stated in the pleadings that he had been engaged on daily wage basis *w.e.f.* 1.10.1998 by the respondent Board till 31.3.2001. It is however the averments made in the pleadings by the respondents that petitioner had rendered his services *w.e.f.* 15.10.1998 to 31.3.2001 as a casual labourer. It is further alleged on behalf of the petitioner that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner in his cross-examination has denied that he has never worked for minimum period of 240 days. It is settled law that onus to prove working of 240 days continuous service initially is on the petitioner/workman. RW1, Mohit Tandon, Senior Executive Engineer, HPSEBL has deposed on oath that the petitioner worked from 1.10.1998 to 31.3.2001. The mandays chart Ext. RW1/B has been produced on the case file.

15. Hon'ble Supreme Court of India in **Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Rafi(DB)** in **CIVIL APPEAL NO. 2895 OF 2009** has held in paras no.6,8,9,10 and 11 as follows:—

> "6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25), it was held as follows: 4 "2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without

paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in 5 getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

7. The said decision was followed in Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400).

8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows: "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

9. In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the nonproduction of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the Indian Evidence Act

apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because 7 notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

10. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165) it was held as follows: "So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman." The position was examined in detail in Surendranagar District Panchayat v. Dehyabhai Amarsingh (2005 (7) Supreme 307) and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (*supra*) was reiterated".

16. The petitioner has not produced any other oral and documentary evidence to establish that he had completed one year continuous service as provided under Section 25-B of the Act. The petitioner except his statement by way of affidavit has not produced any other evidence to show that he has worked from October, 1998 till 31.3.2001. No payment receipts of wages etc. are on record. On the contrary the respondents have produced the mandays chart Ext. RW1/B which has been proved before the court without any objection being raised on behalf of the petitioner. Non production of attendance register does not force this court to derive an adverse inference against the respondent. It is held by Hon'ble Supreme Court in **R.M. Yellatti v. The Asst. Executive Engineer, AIR 2006 SC 355.**

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere nonproduction of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments

lay down the basic principle, namely, that the High Court 9 under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

17. Contention of the petitioner that despite his willingness to work he had not been engaged by the respondent whereas persons junior to him have been engaged and regularized are denied by the respondents. No corroborative evidence oral documentary could be produced by the petitioner to substantiate these allegation nor leave of this court was sought directing the respondent to produce the record pertaining to the services of the persons which has been alleged to have been regularized by the respondents.

18. The petitioner has also failed to prove that he had worked for 240 days in continuous service in a period of 12 months preceding his alleged termination or disengagement. Thus the disengagement of the petitioner does not violate Sections 25-G and 25-H of the Act. There is no evidence produced by the petitioner in support of his contention that he had worked till the year 2001. It is hence established that disengagement of service of the petitioner was not in violation of provisions of Section 25-F and did not amount to retrenchment. The petitioner has not completed one year of continuous service at the time of disengagement. In the light of the above discussion it cannot be held that termination of services of the petitioner by the respondents was illegal and unjustified. Consequently, the petitioner is not entitled to any relief as prayed in the claim petition. Issues No.1 and 3 are decided in favour of the respondents.

Issue no. 2

19. The dispute was raised by the petitioner regarding his termination *vide* demand notice dated 9.7.2009. Prior to this as pleaded by the petitioner he has time and again visited the office of the respondent with a prayer that he may be reinstated in service with all the consequential benefits. He also asserted that he was given assurance that his service will be reinstated. Since no action was taken by the respondent and neither he was reinstated in service, he was constrained to file CWP No.2194/2018 before the Hon'ble High Court which was decided by the Hon'ble High Court in his favour. Subsequently he had approached the Hon'ble High Court *vide* CWP No.1660/2019. Consequent to the above struggle of the petitioner the present reference was made before this court by the appropriate Government.

20. Hon'ble High Court in **Krishan Pal vs. State of Himachal Pradesh and Anr. 2023 Latest Caselaw 3439 HP** has clearly laid down the terms and conditions on the basis of which the claim of a workman can be judged to be barred by limitation delay and laches etc. Hon'ble High Court has subsequent observed in para no.8 as follows:—

"8. Hon'ble Apex Court in case titled Prabhakar v. Joint Director Sericulture Department and Anr., AIR 2016 Supreme Court 2984, has held that dispute, if any, raised after an inordinate delay cannot be said to exist and there is no live dispute. In the aforesaid judgment, Hon'ble Apex Court has held that if dispute is raised after a long period, it has to be seen as to whether such a dispute still exists or not? In such case, law of limitation does not apply, rather it is to be shown by the workman that there is a dispute in praesenti. If the workman is able to give satisfactory explanation for the laches and delays and demonstrates that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, because of such delay, if dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. Most importantly, in the aforesaid judgment, Hon'ble Apex Court has held that in those cases where court finds that dispute still existed, though raised belatedly, it is always for the Court to take

the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement.

Relevant para of the afore judgment reads as under:

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be

treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

21. In the circumstances of the present case also the contention of the petitioner that after his disengagement, he time and again visited the office of the respondents and requested them to reinstate him was not specifically denied by the respondents though they denied existence of an industrial dispute between the parties. Thereafter since 2018 upto 2019 the petitioner was approaching the Hon'ble High Court with regard to his grievances. In these circumstances it cannot be held that the dispute between the petitioner and respondent cease to exist with the lapse of time. In the light of above circumstances it cannot be held that claim of the petitioner was suffered from delay and laches or was barred by limitation even though he had failed to establish his claim in accordance with the provisions of the Industrial Disputes Act. Accordingly issues no.2 is decided in favour of the petitioner.

Issues No. 4 to 6

22. The onus of proof these issues on the respondent. The respondents have produced on record the mandays chart of the petitioner. This documentary evidence was not rebutted on behalf of the petitioner. No other oral or documentary evidence could be produced to show that petitioner has worked for continuous period of 240 days in 12 month preceding his alleged disengagement. In these circumstances the petition is not maintainable and the petitioner had no *locus standi* to prefer the claim petition moreover considering the number of days which are calculated on 255 with respect to his service rendered he had not approached the court with clean hands and suppressed the material facts. Accordingly issues no.4 to 6 are decided in favour of the respondent.

RELIEF

23. In view of my discussion on the issues no. 1 to 6 above, the present claim petition is not maintainable and is accordingly dismissed. Parties are left to bear their costs.

24. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 11/2019
Date of Institution : 25.02.2019
Date of Decision :31.8.2024

Shri Subhash Chand s/o Shri Joginder Singh, r/o VPO Bela Bathri, Tehsil Haroli, District Una, H.P. ...*Petitioner.*

Versus

The Employer/Managing Director, M/s Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. ... *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
For Respondent : Sh. Yatish J.P., Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Authority/Deputy Labour Commissioner:

> "Whether termination of services of Shri Subhash Chand s/o Shri Joginder Singh, r/o V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. *w.e.f.* 14-11-2017 by the Employer/Managing Director, M/S Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that petitioner was engaged by respondent *w.e.f.* 22nd March, 2015 without any appointment letter or terms and conditions of service settled with him. It is further asserted that the petitioner worked *w.e.f.* 22nd March, 2015 to April, 2017 performing his duties honestly, diligently and satisfactorily without giving any chance of complaint or misconduct. Workmen of the respondent company framed union in the month of February/March, 2017 under the name and style of Suri Polex Mazdoor Sangh and petitioner was elected as President of the union. Working committee of union justified grievance of workmen accordingly demand dated 6.4.2017 containing 10 demands under various labour laws applicable to the company have been served by Mazdoor Sangh to the respondent/management company. Conciliation Officer tried to settle the dispute amicably but the same is pending before appropriate

Government *i.e.* Labour Commissioner, Shimla for making the reference. It is alleged that with an intention to break the union the respondent during pendency of the demand notice issued show cause to petitioner *vide* letter no.SPB/137 dated 12.7.2017 and making false allegations asking him to submit his reply within two hours. This clearly showed that respondent management intended to break the union. On 13.7.2017 very next day the services of petitioner were suspended on alleged gross misconduct *vide* letter no.SPB/142 dated 13.7.2017. Respondent management had issued a charge-sheet to petitioner for gross misconduct and directed him to submit the reply within five days. Petitioner submitted the reply to the charge-sheet dated 22.7.2017 *vide* letter dated 27.7.2017 and thereafter he did not receive any communication from the management that his reply is unsatisfactory. Since the respondent was employed more than 500 employees in their establishment so the Model Standing Order Act, 1946 is applicable and charge-sheet was not issued as per Model Standing Orders Act, 1946. The list of witnesses who were to be examined to prove charge against delinquent workman was not supplied to the petitioner. Petitioner received a letter dated 2.8.2017 from Mr. Anish J.P., Advocate who had mentioned that he has been appointed as an Inquiry Officer and domestic inquiry would be conducted on 10.8.2017. Consent of the delinquent employee/ petitioner was not obtained in writing violating the provisions of Model Standing Order Act, 1946 without the consent of delinquent employee/petitioner the inquiry was conducted by Mr. Anish J.P. which was not legal. Despite this the petitioner appeared before the Inquiry Officer but he was not supplied any list of witnesses as well as necessary proceedings details day to day proceedings of the inquiry were also not supplied to the petitioner. Shri Rakesh Kumar Sharma was allowed as defence assistant however, no opportunity to cross-examine the witness was given in favour of the petitioner. The inquiry was concluded by Inquiry Officer at his own level and report was submitted to the management. It is alleged that report of Inquiry Officer has given favouritism towards the management and the Inquiry Officer had not conducted fair and proper enquiry in this case. It is further alleged that the report of the enquiry was given to the petitioner *vide* letter no.SPB/227 dated 5.11.2017 and he was asked to give his statement to the inquiry report. The petitioner had requested that since the enquiry report was provided to him it was not understandable for him. He made correspondence with management in hindi language and requested to provide enquiry report in hindi language but respondent management had refused to receive the reply of the petitioner dated 14.11.2017. Without any communication an amount of Rs.27409/- was credited in the account of petitioner. The refusal of management to receive letter dated 14.11.2017 and crediting the amount without the consent of the petitioner is alleged to be such a conduct of the respondent when they were desperate to terminate the services of the petitioner. It is alleged that the inquiry was falsified and against the mandatory provisions of Model Standing Order Act, 1946 and against the principle of natural justice. The petitioner has prayed that termination of his services *w.e.f.* 14.11.2017 may be revoked and set aside and the respondent be directed to reinstate the services of the petitioner with all consequential benefits incidental thereto.

3. In reply on behalf of respondent preliminary objections *qua* maintainability, concealment of material facts, estoppels, suppression of material facts etc. have been raised. It is asserted that petitioner was absented from his duty on various dates without any intimation and permission *i.e.* 28.7.2015, 15.1.2016 and 29.12.2016. He was found that he had using mobile phone during working hours regarding which notice dated 30.3.2017 was issued to him. He was also found smoking bidi during his work time regarding to which notice was issued to him on 1.4.2017. Another notice dated 27.4.2017 was issued to him regarding low working progress and notice dated 22.6.2017 was issued for wilful absence from duty. Various other instances of violation and misconduct have been referred in the reply. It is also alleged that on 11.7.2017 petitioner and another workmen Bhupinder Singh without any reasonable cause stopped their work on 12.7.2017. It is alleged that Bhupinder, Subhash Chand (petitioner) and another workman Raj Kumar entered the factory at 8 AM. Despite the fact their duties did not start at 8 AM. The petitioner was time and again asked by the company to join his duties but he did not to do so. Show cause notice was also issued to him but he did not join the duty and domestic enquiry was

conducted through an independent person where the petitioner joined the proceedings along with representative Rakesh Sharma. Enquiry was fair after following the principle of natural justice and giving due opportunity to the petitioner. Enquiry report was submitted on 28.10.2017 and it was found that petitioner as well as other workers in a planned action against management and stopped their work and forcibly changed their timing without sufficient reason and then it was in harassment of the management and financial loss. Other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether the domestic enquiry held by the respondent against the petitioner is legal and proper, as alleged. If so, its effect? ...OPR

Relief.

6. Petitioner in order to prove his case has filed affidavit Ext. PW-1 in evidence.

7. Respondent has examined RW1 Shri Anish J.P., Advocate, District Court Una, H.P. who have furnished his inquiry report Ext. RW1/A.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes
Relief. : The reference is decided accordingly

REASONS FOR FINDINGS

Issue No.1

10. At the very outset it is pertinent to mention here that the onus of proving the preliminary issue was on the respondent company. RW1 Shri Anish J.P. Advocate, District Court, Una had conducted the domestic inquiry proceedings in this case and he has produced on record inquiry report Ext.RW1/A. While stepped into witness box he was duly cross-examined by the learned Authorized Representative for the petitioner.

11. Learned Authorized Representative has vehemently argued that inquiry got conducted by the respondent was merely a sham and the proceedings were vitiated due to violation of the principle of natural justice and HP Industrial Employment Standing Rules, 1973. It is submitted that Inquiry Officer has not summoned the necessary witnesses before inquiry and respondent management M/s Surie Polex had not supplied list of witnesses which is against the principle of natural justice.

12. Referring to **2006 (III) FLR 1190 SC** case titled as **Andhra Pradesh & Ors. vs. Venkata Rayudu.** It is argued that if any material is sought to be used in an enquiry then copies of

it should be supplied to the party against whom such enquiry was held. The detail of Standing Orders or specific rules alleged to be violated must be produced. Learned Authorized Representative further argues that the enquiry is liable to be vitiated if the enquiry proceedings were conducted in violation of employer regulation. Proceeding are liable to be set aside if the delinquent not supplied copies of document relied upon by the employer and list of witnesses for providing the charges in violation of the principle of natural justice. (**Pawan Kumar Agarwala vs. General Manager-II and Appointing Authority State Bank of India & Ors. 2016 (1) FLR 865** relied upon).

13. Learned Counsel for the respondent has however controverted the arguments raised by the learned Authorized Representative for the petitioner and asserted that enquiry proceedings were carried out in an unbiased manner. The proceedings carried out as per HP Employees Standing Orders Regulations Rules and the petitioner had himself wilfully absented from the proceedings despite due notice. In these circumstances the petitioner cannot claim that there was any violation of principle of natural justice during the inquiry proceedings.

14. The Inquiry Officer RW1 Shri Anish J.P., Advocate has stated in his cross-examination that no document was given to him in advance. The petitioner had joined the inquiry at the beginning but in the middle of the inquiry petitioner did not appear and therefore he was proceeded against exparte at the stage of evidence. He submitted that the enquiry was conducted under the HP Industrial Employment Rules. He denied that petitioner has not received his notice and stated that petitioner had appeared before him. He admitted that list of witnesses was not supplied to him in advance.

15. Pertinent to mention that no suggestion is made to the effect that he had not supplied the list of witness and documents relied upon by the company to the petitioner. He also mentions that the petitioner was proceeded against exparte on 12.10.2017 and that he had allowed Shri Rakesh Sharma to appear as defence assistant on behalf of the petitioner on a written request. He denied that he is a standing counsel of the company.

16. PW1 Shri Subhash Chand (petitioner) has admitted that the Inquiry Officer Shri Anish J.P., Advocate had sent notice to him to appear in the inquiry proceedings. He appeared before Inquiry Officer on 10.8.2017 He further admits that he sought time to file reply and was given next date i.e. 19.8.2017. He admits that on 19.8.2017 an application was moved by him for appointing a representative which was allowed by the Inquiry officer. He admits that as per his demand Shri Rakesh Sharma was appointed as his representative. He admits that he appeared before Inquiry officer with his representative on 5.9.2017 and sought time for filing reply and he was granted next date for 13.9.2017 where he again sought time for filing of reply and the enquiry proceeding was adjourned for 26.9.2017 and on 26.9.2017 he filed the reply. He further admits that the next date of cross-examination of witness on behalf of company was fixed for 29.9.2017. Subsequently however he denied that on 29.9.2017 affidavits of the company's witnesses were filed and he had sought time for cross-examination. He denied that inquiry proceedings again fixed on 3.10.2017 when time was prayed and the inquiry proceeding was adjourned for 12.10.2017. He denied that on 12.10.2017 neither he nor his representative appeared and subsequently he was proceeded against exparte.

17. The above evidence reveals that petitioner had appeared before the Inquiry Officer and submitted his reply. He was also allowed to be represented by a representative of his choice and was participating in the proceedings till 29.9.2017. No explanation appears on behalf of the petitioner qua the proceeding undertaken by the investigation officer after 29.9.2017. It is time and again argued and alleged that petitioner was not supplied with the list of documents relied by the company and the list of witnesses. However it is not the case of the petitioner that he asked the

Inquiry Officer for these documents and was denied to be supplied. The report of Inquiry Officer reveals that petitioner had refused to take the copy of document stating that he already possessed those documents with him. Petitioner has alleged that Inquiry Officer had proceeded on one sided enquiry however he has not alleged that inquiry was conducting in his absence. No evidence has been produced on behalf of the petitioner to establish that he was present throughout the enquiry proceedings despite which he was condemned unheard. On the other hand, Inquiry Officer has clearly stated that the petitioner was proceeded exparte on 12.10.2017 after two opportunities for cross-examination of company's witnesses. There is no suggestion made to the Inquiry Officer that the petitioner was actually present and not allowed to cross-examine. Silence of petitioner qua the proceedings which are alleged to be exparte as per the enquiry report create doubt with regard to bonafide conduct of the petitioner during enquiry proceedings. Had the petitioner remained present during enquiry he could have produced or give a written application regarding non supplying of list of witnesses and the documents relied upon by the company necessary for the cross-examination of the company's witnesses. It is neither pleaded nor proved on behalf of the petitioner that the request was made to Inquiry Officer to grant time for the cross-examination of the witnesses nor the petitioner had produced any witness in his defence before the Inquiry Officer. Petitioner admits that on 29.9.2017 the case was fixed for company's witness but denied that time was prayed for cross-examination on 3.10.2017 and again time was prayed through Raj Kumar for 12.10.2017 after which the petitioner was proceeded exparte. No other set of circumstances put forth by the petitioner in this case subsequent to 29.9.2017. These circumstances would clearly imply that on 12.10.2017 the petitioner was proceeded exparte due to their wilful absence despite having knowledge of the dates fixed for the proceedings. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in **2020 LLR 847** has held in para nos. 11 and 12 as follows:—

> "11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :
>
> > "28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait- jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi- judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram

partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

* * * *

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/ statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order

passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing"categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, *viz*., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, *i.e*., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made

between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/ Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

"12. The Supreme Court in the case of State Vs. N.S. Gnaneswaran reported in (2013) 3 SCC 594 has held as under :

"12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v.Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank).

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards".

18. The petitioner was duly represented by an authorized representative of his choice during enquiry proceedings and also file the claim in English language thus he cannot claim that enquiry report in English was not understood by him. It is hence clear that in the peculiar circumstances of the enquiry proceedings in the present case though proceedings were carried out by the Inquiry Officer the wilful absence of the petitioner from the enquiry proceedings do not create any vested right in the petitioner for claiming the violation of principle of natural justice if

any by Inquiry Officer. In-fact petitioner had suppressed that he did not take part in enquiry proceedings. No other violaton of Model Standing Orders or principles of Natural Justice is evident from enquiry report. In these circumstances the enquiry conducted by the Inquiry Officer in the present case was legal and proper hence issue no.1 is decided accordingly.

Relief

19. As a sequel to the above discussion on preliminary issue and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

20. The Hon'ble Supreme Court in **Uttar Pradesh State Road Transport Corporation versus Gajadhar Nath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021)** has held in para no.5 as follows:—

> 5. The scope of an adjudicator under the Industrial Disputes Act, 19474 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:
>
> "32. From those decisions, the following principles broadly emerge :—
>
> (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
>
> (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
>
> (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
>
> (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
>
> (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at

large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

21. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

"[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the cir*cum*stances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]"

22. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was proportionality to the misconduct alleged in the charge-sheet.

23. Now come up for hearing of both the parties.

Be called after respite.

31.8.2024 Present: Sh. N.L. Kaundal, Ld. AR for the petitioner
Sh. Yatish J.P. Ld. Counsel for respondent

24. Ld. Authorized Representative for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The petitioner was not supplied copies of the documents relied and list of witnesses more undue harsh punishment has been imposed on the petitioner.

25. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully flouted the office order and did not join the duty on his own. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that**:

> "The power under section 11-A imposes vide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

26. It is a settled law that the punishment for misconduct must be proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

27. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :12/2019
Date of Institution : 25.02.2019
Date of Decision : 31.8.2024

Shri Raj Kumar s/o Shri Shankar Dass, r/o V.P.O. Bathri, Tehsil Haroli, District Una, H.P.
...Petitioner .

Versus

The Employer/Managing Director, M/s Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
For Respondent : Sh. Yatish J.P., Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Authority/Deputy Labour Commissioner:

"Whether termination of services of Shri Raj Kumar S/O Shri Shankar Dass, R/O V.P.O. Bathri, Tehsil Haroli, District Una, H.P. *w.e.f.* 14-11-2017 by the Employer/Managing Director, M/S Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that petitioner was engaged by respondent *w.e.f.* 1.4.2015 without any appointment letter or terms and conditions of service settled with him. It is further asserted that the petitioner worked *w.e.f.* 1.4.2015 to April, 2017 performing his duties honestly, diligently and satisfactorily without giving any chance of complaint or misconduct. Workmen of the respondent company framed union in the month of February/March, 2017 under the name and style of Suri Polex Mazdoor Sangh and petitioner was elected as President of the union. Working committee of union justified grievance of workmen accordingly demand dated 6.4.2017 containing 10 demands under various labour laws applicable to the company have been served by Mazdoor Sangh to the respondent/management company. Conciliation Officer tried to settle the dispute amicably but the same is pending before appropriate Government *i.e.* Labour Commissioner, Shimla for making the reference. It is alleged that with an intention to break the union the respondent during pendency of the demand notice issued show cause to petitioner vide letter no.SPB dated 12.7.2017 and making false allegations asking him to submit his reply within two hours. This clearly showed that respondent management intended to break the union. On 13.7.2017 very next day the services of petitioner were suspended on alleged gross misconduct vide letter no.SPB/141 dated 13.7.2017. Respondent management had issued a charge-sheet to petitioner for gross misconduct and directed him to submit the reply within five days. Petitioner submitted the reply to the charge-sheet dated 22.7.2017 vide letter dated 27.7.2017 and thereafter he did not receive any communication from the management that his reply is unsatisfactory. Since the respondent was employed more than 500 employees in their establishment

so the Model Standing Order Act, 1946 is applicable and charge-sheet was not issued as per Model Standing Orders Act, 1946. The list of witnesses who were to be examined to prove charge against delinquent workman was not supplied to the petitioner. Petitioner received a letter dated 2.8.2017 from Mr. Anish J.P., Advocate who had mentioned that he has been appointed as an Inquiry Officer and domestic inquiry would be conducted on 10.8.2017. Consent of the delinquent employee/petitioner was not obtained in writing violating the provisions of Model Standing Order Act, 1946 without the consent of delinquent employee/petitioner the inquiry was conducted by Mr. Anish J.P. which was not legal. Despite this the petitioner appeared before the Inquiry Officer but he was not supplied any list of witnesses as well as necessary proceedings details day to day proceedings of the inquiry were also not supplied to the petitioner. Shri Rakesh Kumar Sharma was allowed as defence assistant however, no opportunity to cross-examine the witness was given in favour of the petitioner. The inquiry was concluded by Inquiry Officer at his own level and report was submitted to the management. It is alleged that report of Inquiry Officer has given favouritism towards the management and the Inquiry Officer had not conducted fair and proper enquiry in this case. It is further alleged that the report of the enquiry was given to the petitioner vide letter no.SPB dated 5.11.2017 and he was asked to give his statement to the inquiry report. The petitioner had requested that since the enquiry report was provided to him it was not understandable for him. He made correspondence with management in hindi language and requested to provide enquiry report in hindi language but respondent management had refused to receive the reply of the petitioner dated 14.11.2017. Without any communication an amount of Rs.27409/- was credited in the account of petitioner. The refusal of management to receive letter dated 14.11.2017 and crediting the amount without the consent of the petitioner is alleged to be such a conduct of the respondent when they were desperate to terminate the services of the petitioner. It is alleged that the inquiry was falsified and against the mandatory provisions of Model Standing Order Act, 1946 and against the principle of natural justice. The petitioner has prayed that termination of his services *w.e.f.* 14.11.2017 may be revoked and set aside and the respondent be directed to reinstate the services of the petitioner with all consequential benefits incidental thereto.

3. In reply on behalf of respondent preliminary objections qua maintainability, concealment of material facts, estoppels, suppression of material facts etc. have been raised. It is asserted that petitioner was absented from his duty on various dates without any intimation and permission i.e. 17.5.2015, 20.10.2015 and 11.7.2017. He was found that he had using mobile phone during working hours regarding which notice dated 30.3.2017 was issued to him. Notice dated 12.7.2017 was issued to him regarding low working progress and notice dated 27.6.2017 was issued for leaving the work place before time. Various other instances of violation and misconduct have been referred in the reply. It is alleged that Bhupinder Singh and Subhash Chand entered the factory at 8 AM. Despite the fact their duties did not start at 8 AM. The petitioner was time and again asked by the company to join his duties but he did not to do so. Show cause notice was also issued to him but he did not join the duty and domestic enquiry was conducted through an independent person where the petitioner joined the proceedings along with representative Rakesh Sharma. Enquiry was fair after following the principle of natural justice and giving due opportunity to the petitioner. Enquiry report was submitted on 28.10.2017 and it was found that petitioner as well as other workers in a planned action against management and stopped their work and forcibly changed their timing without sufficient reason and then it was in harassment of the management and financial loss. Other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether the domestic enquiry held by the respondent against the petitioner is legal and proper, as alleged. If so, its effect? ...OPR

Relief.

6. Petitioner in order to prove his case has filed affidavit Ext. PW-1 in evidence.

7. Respondent has examined RW1 Shri Anish J.P., Advocate, District Court Una, H.P. who have furnished his inquiry report Ext. RW1/A.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes
Relief. : The reference is decided accordingly.

REASONS FOR FINDINGS

Issue No.1

10. At the very outset it is pertinent to mention here that the onus of proving the preliminary issue was on the respondent company. RW1 Shri Anish J.P. Advocate, District Court, Una had conducted the domestic inquiry proceedings in this case and he has produced on record inquiry report Ext.RW1/A. While stepped into witness box he was duly cross-examined by the learned Authorized Representative for the petitioner.

11. Learned Authorized Representative has vehemently argued that inquiry got conducted by the respondent was merely a sham and the proceedings were vitiated due to violation of the principle of natural justice and HP Industrial Employment Standing Rules, 1973. It is submitted that Inquiry Officer has not summoned the necessary witnesses before inquiry and respondent management M/s Surie Polex had not supplied list of witnesses which is against the principle of natural justice.

12. Referring to **2006 (III) FLR 1190 SC** case titled as **Andhra Pradesh & Ors. vs. Venkata Rayudu.** It is argued that if any material is sought to be used in an enquiry then copies of it should be supplied to the party against whom such enquiry was held. The detail of Standing Orders or specific rules alleged to be violated must be produced. Learned Authorized Representative further argues that the enquiry is liable to be vitiated if the enquiry proceedings were conducted in violation of employer regulation. Proceeding are liable to be set aside if the delinquent not supplied copies of document relied upon by the employer and list of witnesses for providing the charges in violation of the principle of natural justice. (**Pawan Kumar Agarwala vs. General Manager-II and Appointing Authority State Bank of India & Ors. 2016 (1) FLR 865** relied upon).

13. Learned Counsel for the respondent has however controverted the arguments raised by the learned Authorized Representative for the petitioner and asserted that enquiry proceedings were carried out in an unbiased manner. The proceedings carried out as per HP Employees Standing Orders Regulations Rules and the petitioner had himself wilfully absented from the

proceedings despite due notice. In these circumstances the petitioner cannot claim that there was any violation of principle of natural justice during the inquiry proceedings.

14. The Inquiry Officer RW1 Shri Anish J.P., Advocate has stated in his cross-examination that no document was given to him in advance. The petitioner had joined the inquiry at the beginning but in the middle of the inquiry petitioner did not appear and therefore he was proceeded against exparte at the stage of evidence. He submitted that the enquiry was conducted under the HP Industrial Employment Rules. He denied that petitioner has not received his notice and stated that petitioner had appeared before him. He admitted that list of witnesses was not supplied to him in advance.

15. Pertinent to mention that no suggestion is made to the effect that he had not supplied the list of witness and documents relied upon by the company to the petitioner. He also mentions that the petitioner was proceeded against exparte on 12.10.2017 and that he had allowed Shri Rakesh Sharma to appear as defence assistant on behalf of the petitioner on a written request. He denied that he is a standing counsel of the company.

16. PW1 Shri Raj Kumar (petitioner) has admitted that the Inquiry Officer Shri Anish J.P., Advocate had sent notice to him to appear in the inquiry proceedings. He appeared before Inquiry Officer on 10.8.2017. He denied that he sought time to file reply and was given next date i.e. 19.8.2017. He denied that on 19.8.2017 an application was moved by him for appointing a representative which was allowed by the Inquiry officer. He denied that as per his demand Shri Rakesh Sharma was appointed as his representative. He denied that he appeared before Inquiry officer with his representative on 5.9.2017 and sought time for filing reply and he was granted next date for 13.9.2017 where he again sought time for filing of reply and the enquiry proceeding was adjourned for 26.9.2017 and on 26.9.2017 he filed the reply. He further denied that the next date of cross-examination of witness on behalf of company was fixed for 29.9.2017. Subsequently he denied that on 29.9.2017 affidavits of the company's witnesses were filed and he had sought time for cross-examination. He denied that inquiry proceedings again fixed on 3.10.2017 when time was prayed and the inquiry proceeding was adjourned for 12.10.2017. He denied that on 12.10.2017 neither he nor his representative appeared and subsequently he was proceeded against exparte.

17. The above evidence and record of inquiry reveals that petitioner had appeared before the Inquiry Officer and submitted his reply. He was also allowed to be represented by a representative of his choice and was participating in the proceedings till 10.8.2017. No explanation appears on behalf of the petitioner qua the proceeding undertaken by the investigation officer after 10.8.2017. It is time and again argued and alleged that petitioner was not supplied with the list of documents relied by the company and the list of witnesses. However it is not the case of the petitioner that he asked the Inquiry Officer for these documents and was denied to be supplied. The report of Inquiry Officer reveals that petitioner had refused to take the copy of document stating that he already possessed those documents with him. Petitioner has alleged that Inquiry Officer had proceeded on one sided enquiry however he has not alleged that inquiry was conducting in his absence. No evidence has been produced on behalf of the petitioner to establish that he was present throughout the enquiry proceedings despite which he was condemned unheard. On the other hand, Inquiry Officer has clearly stated that the petitioner was proceeded exparte on 12.10.2017 after two opportunities for cross-examination of company's witnesses. There is no suggestion made to the Inquiry Officer that the petitioner was actually present and not allowed to cross-examine. Silence of petitioner qua the proceedings which are alleged to be exparte as per the enquiry report create doubt with regard to bonafide conduct of the petitioner during enquiry proceedings. Had the petitioner remained present during enquiry he could have produced or give a written application regarding non supplying of list of witnesses and the documents relied upon by the company necessary for the cross-examination of the company's witnesses. It is neither pleaded nor proved on behalf of the

petitioner that the request was made to Inquiry Officer to grant time for the cross-examination of the witnesses nor the petitioner had produced any witness in his defence before the Inquiry Officer. Petitioner denied that on 29.9.2017 the case was fixed for company's witness he denied that time was prayed for cross-examination on 3.10.2017 and again time was prayed through Raj Kumar for 12.10.2017 after which the petitioner was proceeded exparte. No other set of circumstances put forth by the petitioner in this case subsequent to his admitted appearance before Inquiry Officer on 10.8.2017. These circumstances would clearly imply that on 12.10.2017 the petitioner was proceeded exparte due to their wilful absence despite having knowledge of the dates fixed for the proceedings. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in **2020 LLR 847** has held in para nos. 11 and 12 as follows:—

"11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :

"28. The decisions cited above make one thing clear, *viz.*, principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait- jacket. Their applicability depends upon the context and the facts and cir*cum*stances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi- judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without

supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, *i.e.*, whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (*i.e.*, adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/ statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing"categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not

give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, *i.e.*, in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

"12. The Supreme Court in the case of State Vs. N.S. Gnaneswaran reported in (2013) 3 SCC 594 has held as under :

"12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v.Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.)"

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards".

18. The petitioner was duly represented by an authorized representative of his choice during enquiry proceedings and also filed the claim in English language thus he cannot claim that enquiry report in English was not understood by him. It is hence clear that in the peculiar cir*cum*stances of the enquiry proceedings in the present case though proceedings were carried out by the Inquiry Officer the wilful absence of the petitioner from the enquiry proceedings do not create any vested right in the petitioner for claiming the violation of principle of natural justice if any by Inquiry Officer. In-fact petitioner had suppressed that he did not take part in enquiry proceedings. No other violation of Model Standing Orders or principles of Natural Justice is evident from enquiry report. In these cir*cum*stances the enquiry conducted by the Inquiry Officer in the present case was legal and proper hence issue no.1 is decided accordingly.

Relief

19. As a sequel to the above discussion on preliminary issue and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

20. The Hon'ble Supreme Court in **Uttar Pradesh State Road Transport Corporation versus Gajadhar Nath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021)** has held in para no.5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 19474 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment

reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

"32. From those decisions, the following principles broadly emerge :—

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or

discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

21. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

"[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the cir*cum*stances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]"

22. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was proportionality to the misconduct alleged in the charge-sheet.

23. Now come up for hearing of both the parties.

Be called after respite.

31-8-2024 Present: Sh. N.L.Kaundal, Ld. AR for the petitioner
Sh. Yatish J.P. Ld. Counsel for respondent

24. Ld. Authorized Representative for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order.

The petitioner was not supplied copies of the documents relied and list of witnesses more undue harsh punishment has been imposed on the petitioner.

25. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully flouted the office order and did not join the duty on his own. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that**:

> "The power under section 11-A imposes *vide* discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

26. It is a settled law that the punishment for misconduct must be proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

27. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-
CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. :13/2019
Date of Institution : 25.02.2019
Date of Decision : 31.8.2024

Shri Bhagat Ram s/o Shri Preetam Chand, r/o VPO Bathu, Tehsil Haroli, District Una, H.P.
...Petitioner .

Versus

The Employer/Managing Director, M/s Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
For Respondent : Sh. Yatish J.P., Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Authority/Deputy Labour Commissioner:

"Whether termination of services of Shri Bhagat Ram s/o Shri Preetam Chand, r/o V.P.O. Bathu, Tehsil Haroli, District Una, H.P. *w.e.f.* 18-07-2017 by the Employer/Managing Director, M/s Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that petitioner was engaged by respondent *w.e.f.* 1.1.2013 in the capacity of operator without any appointment letter or terms and conditions of service settled with him. It is further asserted that the petitioner worked *w.e.f.* 1.1.2013 to 22.3.2017 performing his duties honestly, diligently and satisfactorily without giving any chance of complaint or misconduct. It is asserted that petitioner was on leave on 25.3.2017 with prior permission from the HOD however his leave was not marked by the respondent in attendance register thereafter he was served an show cause notice on 25.3.2017 due to reason that workmen of the respondent company framed union under the name and style of Suri Polex Mazdoor Sangh and Shri Subhash Chand was elected as President of the union. It is asserted that the petitioner was one of bearer of working committee of the Mazdoor Sangh. Working committee of union had served one demand charter to the respondent vide demand notice dated 6.4.2017 through President of Mazdoor Sangh and the copy of the same was forwarded to Labour Officer/Labour Inspector Una for necessary action. Thereafter conciliation proceedings were started by the Labour Officer, Una and the respondent management filed reply on 11.9.2018. Thereafter Labour Officer had concluded the matter between the parties and forwarded to the office of Labour Commissioner, H.P. for making reference and the same is still pending before the Labour Authority. It is submitted that the services of the petitioner were suspended by the Manager of the Company without any alleged misconduct but no suspension were paid to him by the respondent company under Section 10-A of the Industrial Model Standing Order Act, 1946 or Certified Standing Order Act, 1946 which are applicable to the respondent company. Thereafter his services were suspended on account of his wilful misconduct and charge-sheet dated 13.4.2017 was served upon the petitioner and thereafter Shri Anish J.P., Advocate was appointed as Inquiry Officer by the Manager of respondent company to conduct the enquiry against the petitioner vide charge-sheet dated 13.4.2017. It is submitted that vide letter dated 27.1.2017 requested the respondent to give him letter dated 13.4.2017 in hindi language as he has no knowledge of English language and the copy of the same was forwarded to Labour Commissioner, H.P., Manager Surie Polex Bela Bathadi and Labour Officer, Una respectively. The request of petitioner regarding give him letter in hindi

was not accepted by the respondent and as such the respondent deliberately filed reply in English language so that petitioner could not be understood the contents of reply. While terminating the services of the petitioner no opportunity had been given to the petitioner to file appeal before the Managing Director/proprietor of the company/firm since the charge-sheet was served by the Manager of the respondent and services of the petitioner were terminated by Shri Aloke Surie, Proprietor of the firm as he was not competent to terminate the services of the petitioner. It is submitted that during the pendency of general demand notice served by the Mazdoor Sangh vide their demands charter dated 6.4.2017 the services of the petitioner were unlawfully terminated by the respondent without taken the prior permission of the petitioner from the Labour Officer, Una as well as Labour Commissioner, H.P. and as such the same had violated under Section 33-C (b) of the Industrial Disputes Act, 1947. It is further submitted that the respondent had not terminated the services of the petitioner however, he also terminated the services of Subhash Chand, Raj Kumar and Bhupinder Singh due to their union activities and the respondent had acted unfair labour practices within the meaning of 5th Schedule item 1(a), 4(f), 5(a), (e) and (g) of the Industrial Disputes Act, 1947. It is asserted that the act of the respondent while terminating the services of the petitioner on 18.7.2017 was highly unjustified, unconstitutional, arbitrary and against the mandatory provisions of the Industrial Disputes Act, 1947. The petitioner has prayed that termination of his services *w.e.f.* 18.7.2017 may be revoked and set aside and the respondent be directed to reinstate the services of the petitioner with all consequential benefits incidental thereto.

3. In reply on behalf of respondent preliminary objections qua maintainability, concealment of material facts, estoppels, suppression of material facts etc. have been raised. It is asserted that petitioner was absented from his duty on the dates without any intimation and permission i.e. on 24.3.2017 due to which show cause notice vide reference no.SPB/355 dated 25.3.2017 was issued to the petitioner as well as an FIR no.122 under Section 451, 341, 504, 506, and IPC was got registered against the petitioner on 14.5.2014 at Police Station Haroli. It is asserted that the petitioner was working in the factory and on 31.3.2017 he and one Nunkeshwar Yadav was shifted to other section for working on which Nunkeshwar Yadav joined his duties in new Section but the petitioner had not joined his duties in new Section. On 2.4.2017 the petitioner was asked to join the duties in his new section but he forcibly worked in his old section and again on 4.4.2017 he was ordered to join his duties in new section however, he did not again join his duties as well as without marked his attendance he went outside the factory premises and thereafter he did not come back in the factory and did not join his duties. The management had also issued letters to the petitioner to this effect thereafter he was suspended and charge-sheeted. Domestic enquiry was conducted through an independent Inquiry Officer with regard to matter of dispute of petitioner and the management and the parties were summoned on 13.5.2017 and the proceeding on inquiry was got conducted by the Inquiry Officer by followed fair play and principle of natural justice and report was submitted by the Inquiry Officer on 10.7.2017. The petitioner was joined the inquiry proceedings along with his representative but nothing was done at the back of the petitioner who had marked his presence on each and every day of proceedings. The Inquiry officer had submitted his inquiry report after going through entire documentary as well as oral evidence led by both the parties and found that the charges levelled against the petitioner in charge-sheet vide reference no.SPB/320 dated 13.4.2017 which were totally valid. It has asserted that the respondent had not having any ill will or malafide intention towards the petitioner but the petitioner was not mend his ways despite given opportunities and left the respondent. It is further submitted that respondent suffered financial loss due to the act and conduct of the petitioner as well as he had created indiscipline in the factory which amounts to gross misconduct on the part of the petitioner. Other allegations were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether the domestic enquiry held by the respondent against the petitioner is legal and proper, as alleged. If so, its effect? ...OPR

Relief.

6. Petitioner in order to prove his case has filed affidavit Ext. PW-1 in evidence.

7. Respondent has examined RW1 Shri Anish J.P., Advocate, District Court Una, H.P. who have furnished his inquiry report Ext. RW1/A.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes
Relief. : The reference is decided accordingly

REASONS FOR FINDINGS

Issue No. 1

10. At the very outset it is pertinent to mention here that the onus of proving the preliminary issue was on the respondent company. RW1 Shri Anish J.P. Advocate, District Court, Una had conducted the domestic inquiry proceedings in this case and he has produced on record inquiry report Ext.RW1/A. While stepped into witness box he was duly cross-examined by the learned Authorized Representative for the petitioner.

11. Learned Authorized Representative has vehemently argued that inquiry got conducted by the respondent was merely a sham and the proceedings were vitiated due to violation of the principle of natural justice and HP Industrial Employment Standing Rules, 1973. It is submitted that Inquiry Officer has not summoned the necessary witnesses before inquiry and respondent management M/s Surie Polex had not supplied list of witnesses which is against the principle of natural justice.

12. Referring to **2006 (III) FLR 1190 SC** case titled as **Andhra Pradesh & Ors. vs. Venkata Rayudu.** It is argued that if any material is sought to be used in an enquiry then copies of it should be supplied to the party against whom such enquiry was held. The detail of Standing Orders or specific rules alleged to be violated must be produced. Learned Authorized Representative further argues that the enquiry is liable to be vitiated if the enquiry proceedings were conducted in violation of employer regulation. Proceeding are liable to be set aside if the delinquent not supplied copies of document relied upon by the employer and list of witnesses for providing the charges in violation of the principle of natural justice. (**Pawan Kumar Agarwala vs. General Manager-II and Appointing Authority State Bank of India & Ors. 2016 (1) FLR 865** relied upon).

13. Learned Counsel for the respondent has however controverted the arguments raised by the learned Authorized Representative for the petitioner and asserted that enquiry proceedings

were carried out in an unbiased manner. The proceedings carried out as per HP Employees Standing Orders Regulations Rules. In these circumstances the petitioner cannot claim that there was any violation of principle of natural justice during the inquiry proceedings.

14. The proceedings for the enquiry as well as inquiry report have been produced on record. Petitioner Has admitted that misconduct enquiry was conducted against him and Shri Anish J.P., Advocate was appointed as Inquiry Officer. He admitted that pursuant to a notice he appeared in enquiry proceedings on 13.5.2107. He denied that on 13.5.2017 the representative of management Shri Ramesh Kumar had supplied all the documents furnished by them and regarding this his statement was recorded by Inquiry Officer. He however admitted his signature inside Ext. R-1. He admits appearing before the Inquiry Officer also on 18.5.2017 however denied that he submitted an application for the appointment of representative. He has denied all suggestion qua subsequent proceedings conducted by Inquiry Officer. He denied filing reply before Inquiry Officer. The truthfulness of testimony of petitioner's case is doubtful specially from the denial regarding supplying of documents relied upon by the respondents, as the petitioner admits his signatures on his statement which have been recorded by Inquiry Officer with regard to supply of document at Ext. R1. Such signature exists on the record of proceedings throughout and it is neither pleaded nor argued that he was made to sign all documents or his signatures were obtained by Inquiry Officer on blank documents. Signatures of the petitioner are in English and claim petition has also been presented in English language. The inquiry report Ext. RW1/A is duly proved in the statement of Inquiry Officer Shri Anish J.P., Advocate with regard to day to day proceedings, Respondent no.1 Inquiry Officer has mentioned that worker had not asked for copies of day to day proceedings. It is evident that the copies of the proceedings and inquiry report Ext. RW1/A have been produced before this court. The Inquiry Officer has stated that Shri Gurmail Singh has appeared as defence assistant on behalf of the petitioner. No suggestion is made to this witness to the effect that Shri Vinod and Bhagat Ram had not appeared before Inquiry Officer nor recorded their statements in defence of the petitioner. The record reveals that the petitioner had not only cross-examined the complainant witness but also produced his evidence by self examination and examination of one Shri Vinod Kumar. It is not the case of the petitioner that he was not present during the proceedings. The record was produced and the statements of the parties clearly establishes that documents were supplied to the petitioner regarding which statements have recorded by the Inquiry Officer. The petitioner cross-examined complainant witness and also produced witnesses in his defence. The whole proceedings of inquiry were just fair and reasonable and no iota of circumstances proves violation of the principle of natural justice. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in **2020 LLR 847** has held in para nos. 11 and 12 as follows:—

> "11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :
>
> "28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait- jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi- judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of

Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post- decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

* * * *

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing"categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e*., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the cir*cum*stances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

"12. The Supreme Court in the case of State Vs. N.S. Gnaneswaran reported in (2013) 3 SCC 594 has held as under :

"12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v.Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.)

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards".

15. It is hence clear that in the peculiar cir*cum*stances of the present case and after going through the inquiry proceedings produced before this court it cannot be held that there was violation of principle of natural justice in conduct of the inquiry. No specific pleadings as well as evidence points towards the violation of Model Standing Order regarding the conduct of the

inquiry. Hence the enquiry conducted by Inquiry Officer with respect to charges against the petitioner is held to be legal just and proper and issue no.1 is decided accordingly.

Relief

16. As a sequel to the above discussion on preliminary issue and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

17. The Hon'ble Supreme Court in **Uttar Pradesh State Road Transport Corporation versus Gajadhar Nath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021)** has held in para no.5 as follows:—

> 5. The scope of an adjudicator under the Industrial Disputes Act, 19474 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:
>
> "32. From those decisions, the following principles broadly emerge :—
>
> (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
>
> (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
>
> (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
>
> (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
>
> (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or

discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

18. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

"[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the cir*cum*stances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]"

19. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was proportionality to the misconduct alleged in the charge-sheet.

20. Now come up for hearing of both the parties.

Be called after respite.

31.8.2024 Present: Sh. N.L.Kaundal, Ld. AR for the petitioner
Sh. Yatish J.P. Ld. Counsel for respondent

21. Ld. Authorized Representative for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The petitioner was not supplied copies of the documents relied and list of witnesses more undue harsh punishment has been imposed on the petitioner.

22. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully flouted the office order and did not join the duty on his own. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that**:

> "The power under section 11-A imposes *vide* discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and cir*cum*stances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

23. It is a settled law that the punishment for misconduct must be proportionally and reasonably construed vis-a-vis the nature of misconduct proved or established. In petitioner's case the termination of petitioner was slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

24. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :113/2018
Date of Institution : 31.12.2018
Date of Decision : 31.8.2024

Shri Bhupinder Singh s/o Shri Ram Rattan, r/o Village Kalewal, P.O. Binewal, Tehsil Garhshankar, District Hoshiarpur, Punjab. ...*Petitioner* .

Versus

The Employer/Managing Director, M/s Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. ... *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
For Respondent : Sh. Yatish J.P., Ld. Adv.

AWARD

The following reference has been received by this court for adjudication by the appropriate Authority/Deputy Labour Commissioner:

> "Whether termination of services of Shri Bhupinder Singh s/o Shri Ram Rattan, r/o Village Kalewal, P.O. Binewal, Tehsil Garhshankar, District Hoshiarpur, Punjab *w.e.f.* 14.11.2017 by the Employer/Managing Director, M/S Surie Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that petitioner was engaged by respondent *w.e.f.* 26.9.2014 without any appointment letter or terms and conditions of service settled with him. It is further asserted that the petitioner worked *w.e.f.* 26.9.2014 to April, 2017 performing his duties honestly, diligently and satisfactorily without giving any chance of complaint or misconduct. Workmen of the respondent company framed union in the month of February/March, 2017 under the name and style of Suri Polex Mazdoor Sangh and petitioner was elected as President of the union. Working committee of union justified grievance of workmen accordingly demand dated 6.4.2017 containing 10 demands under various labour laws applicable to the company have been served by Mazdoor Sangh to the respondent/management company. Conciliation Officer tried to settle the dispute amicably but the same is pending before appropriate

Government i.e. Labour Commissioner, Shimla for making the reference. It is alleged that with an intention to break the union the respondent during pendency of the demand notice issued show cause to petitioner vide letter no.SPB/138 dated 11.7.2017 and making false allegations asking him to submit his reply within two hours. This clearly showed that respondent management intended to break the union. On 13.7.2017 very next day the services of petitioner were suspended on alleged gross misconduct vide letter no.SPB/143 dated 13.7.2017. Respondent management had issued a charge-sheet to petitioner for gross misconduct and directed him to submit the reply within five days. Petitioner submitted the reply to the charge-sheet dated 22.7.2017 *vide* letter dated 27.7.2017 and thereafter he did not receive any communication from the management that his reply is unsatisfactory. Since the respondent was employed more than 500 employees in their establishment so the Model Standing Order Act, 1946 is applicable and charge-sheet was not issued as per Model Standing Orders Act, 1946. The list of witnesses who were to be examined to prove charge against delinquent workman was not supplied to the petitioner. Petitioner received a letter dated 2.8.2017 from Mr. Anish J.P., Advocate who had mentioned that he has been appointed as an Inquiry Officer and domestic inquiry would be conducted on 10.8.2017. Consent of the delinquent employee/petitioner was not obtained in writing violating the provisions of Model Standing Order Act, 1946 without the consent of delinquent employee/petitioner the inquiry was conducted by Mr. Anish J.P. which was not legal. Despite this the petitioner appeared before the Inquiry Officer but he was not supplied any list of witnesses as well as necessary proceedings details day to day proceedings of the inquiry were also not supplied to the petitioner. Shri Rakesh Kumar Sharma was allowed as defence assistant however, no opportunity to cross-examine the witness was given in favour of the petitioner. The inquiry was concluded by Inquiry Officer at his own level and report was submitted to the management. It is alleged that report of Inquiry Officer has given favouritism towards the management and the Inquiry Officer had not conducted fair and proper enquiry in this case. It is further alleged that the report of the enquiry was given to the petitioner vide letter no.SPB/277 dated 5.11.2017 and he was asked to give his statement to the inquiry report. The petitioner had requested that since the enquiry report was provided to him it was not understandable for him. He made correspondence with management in hindi language and requested to provide enquiry report in hindi language but respondent management had refused to receive the reply of the petitioner dated 14.11.2017. Without any communication an amount of Rs.27700/- was credited in the account of petitioner. The refusal of management to receive letter dated 14.11.2017 and crediting the amount without the consent of the petitioner is alleged to be such a conduct of the respondent when they were desperate to terminate the services of the petitioner. It is alleged that the inquiry was falsified and against the mandatory provisions of Model Standing Order Act, 1946 and against the principle of natural justice. The petitioner has prayed that termination of his services *w.e.f.* 14.11.2017 may be revoked and set aside and the respondent be directed to reinstate the services of the petitioner with all consequential benefits incidental thereto.

3. In reply on behalf of respondent preliminary objections *qua* maintainability, concealment of material facts, estoppels, suppression of material facts etc. have been raised. It is asserted that petitioner was absented from his duty on various dates without any intimation and permission i.e. 11.5.2017, 18.6.2017, 21.6.2017, 23.6.2017, 24/25.6.2017 and therefore on 11.7.2017 he has stopped the machine without any reasonable cause in which show cause notice was issued to him. Notice was issued on 12.7.2017 to the petitioner with regard to forcibly entered other timing of shift. Various other instances of violation and misconduct have been referred in the reply. It is alleged that Bhupinder Singh (petitioner), Subhash Chand (petitioner) and another workman Raj Kumar entered the factory at 8 AM. Despite the fact their duties did not start at 8 AM. The petitioner was time and again asked by the company to join his duties but he did not to do so. Show cause notice was also issued to him but he did not join the duty and domestic enquiry was conducted through an independent person where the petitioner joined the proceedings along with representative Rakesh Sharma. Enquiry was fair after following the principle of natural justice and giving due opportunity to the petitioner. Enquiry report was submitted on 28.10.2017 and it was

found that petitioner as well as other workers in a planned action against management and stopped their work and forcibly changed their timing without sufficient reason and then it was in harassment of the management and financial loss. Other averments made in the petition were denied and it is prayed that the petition be dismissed.

4. In rejoinder the preliminary objections raised by the respondent were denied and the facts stated in the claim petition were reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the specific issue regarding to the proceedings were framed as follows:—

1. Whether the domestic enquiry held by the respondent against the petitioner is legal and proper, as alleged. If so, its effect? ...OPR

Relief.

6. Petitioner in order to prove his case has filed affidavit Ext. PW-1 in evidence.

7. Respondent has examined RW1 Shri Anish J.P., Advocate, District Court Una, H.P. who have furnished his inquiry report Ext. RW1/A.

8. I have heard the learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes
Relief. : The reference is decided accordingly

REASONS FOR FINDINGS

Issue No.1

10. At the very outset it is pertinent to mention here that the onus of proving the preliminary issue was on the respondent company. RW1 Shri Anish J.P. Advocate, District Court, Una had conducted the domestic inquiry proceedings in this case and he has produced on record inquiry report Ext.RW1/A. While stepped into witness box he was duly cross-examined by the learned Authorized Representative for the petitioner.

11. Learned Authorized Representative has vehemently argued that inquiry got conducted by the respondent was merely a sham and the proceedings were vitiated due to violation of the principle of natural justice and HP Industrial Employment Standing Rules, 1973. It is submitted that Inquiry Officer has not summoned the necessary witnesses before inquiry and respondent management M/s Surie Polex had not supplied list of witnesses which is against the principle of natural justice.

12. Referring to **2006 (III) FLR 1190 SC** case titled as **Andhra Pradesh & Ors. vs. Venkata Rayudu.** It is argued that if any material is sought to be used in an enquiry then copies of it should be supplied to the party against whom such enquiry was held. The detail of Standing Orders or specific rules alleged to be violated must be produced. Learned Authorized Representative further argues that the enquiry is liable to be vitiated if the enquiry proceedings

were conducted in violation of employer regulation. Proceeding are liable to be set aside if the delinquent not supplied copies of document relied upon by the employer and list of witnesses for providing the charges in violation of the principle of natural justice. (**Pawan Kumar Agarwala vs. General Manager-II and Appointing Authority State Bank of India & Ors. 2016 (1) FLR 865** relied upon).

13. Learned Counsel for the respondent has however controverted the arguments raised by the learned Authorized Representative for the petitioner and asserted that enquiry proceedings were carried out in an unbiased manner. The proceedings carried out as per HP Employees Standing Orders Regulations Rules and the petitioner had himself wilfully absented from the proceedings despite due notice. In these circumstances the petitioner cannot claim that there was any violation of principle of natural justice during the inquiry proceedings.

14. The Inquiry Officer RW1 Shri Anish J.P., Advocate has stated in his cross-examination that no document was given to him in advance. The petitioner had joined the inquiry at the beginning but in the middle of the inquiry petitioner did not appear and therefore he was proceeded against exparte at the stage of evidence. He submitted that the enquiry was conducted under the HP Industrial Employment Rules. He denied that petitioner has not received his notice and stated that petitioner had appeared before him. He admitted that list of witnesses was not supplied to him in advance.

15. Pertinent to mention that no suggestion is made to the effect that he had not supplied the list of witness and documents relied upon by the company to the petitioner. He also mentions that the petitioner was proceeded against exparte on 12.10.2017 and that he had allowed Shri Rakesh Sharma to appear as defence assistant on behalf of the petitioner on a written request. He denied that he is a standing counsel of the company.

16. PW1 Shri Bhupinder Singh (petitioner) has admitted that the Inquiry Officer Shri Anish J.P., Advocate had sent notice to him to appear in the inquiry proceedings. He appeared before Inquiry Officer on 10.8.2017 He further denied that he sought time to file reply and was given next date i.e. 19.8.2017. He denied that on 19.8.2017 an application was moved by him for appointing a representative which was allowed by the Inquiry officer. He admits that Raj Kumar and Subhash also appeared in enquiry proceedings with him but he denied that as per his demand Shri Rakesh Sharma was appointed as his representative. He denied that he appeared before Inquiry officer with his representative on 5.9.2017 and sought time for filing reply and he was granted next date for 13.9.2017 where he again sought time for filing of reply and the enquiry proceeding was adjourned for 26.9.2017 but he admits that he filed the reply. He further denied that the next date of cross-examination of witness on behalf of company was fixed for 29.9.2017. Subsequently he denied that on 29.9.2017 affidavits of the company's witnesses were filed and he had sought time for cross-examination. He denied that inquiry proceedings again fixed on 3.10.2017 when time was prayed and the inquiry proceeding was adjourned for 12.10.2017. He denied that on 12.10.2017 neither he nor his representative appeared and subsequently he was proceeded against exparte.

17. The above evidence reveals that petitioner had appeared before the Inquiry Officer and submitted his reply. Record of inquiry reveals that he was also allowed to be represented by a representative of his choice and was participating in the proceedings till 26.9.2017. No explanation appears on behalf of the petitioner qua the proceeding undertaken by the investigation officer after 26.9.2017. It is time and again argued and alleged that petitioner was not supplied with the list of documents relied by the company and the list of witnesses. However it is not the case of the petitioner that he asked the Inquiry Officer for these documents and was denied to be supplied. The report of Inquiry Officer reveals that petitioner had refused to take the copy of document stating that he already possessed those documents with him. Petitioner has alleged that Inquiry Officer had

proceeded on one sided enquiry however he has not alleged that inquiry was conducting in his absence. No evidence has been produced on behalf of the petitioner to establish that he was present throughout the enquiry proceedings despite which he was condemned unheard. On the other hand, Inquiry Officer has clearly stated that the petitioner was proceeded exparte on 12.10.2017 after two opportunities for cross-examination of company's witnesses. There is no suggestion made to the Inquiry Officer that the petitioner was actually present and not allowed to cross-examine. Silence of petitioner qua the proceedings which are alleged to be exparte as per the enquiry report create doubt with regard to bonafide conduct of the petitioner during enquiry proceedings. Had the petitioner remained present during enquiry he could have produced or give a written application regarding non supplying of list of witnesses and the documents relied upon by the company necessary for the cross-examination of the company's witnesses. It is neither pleaded nor proved on behalf of the petitioner that the request was made to Inquiry Officer to grant time for the cross-examination of the witnesses nor the petitioner had produced any witness in his defence before the Inquiry Officer. Petitioner denied that on 26.9.2017 the case was fixed for company's witness he denied that time was prayed for cross-examination on 3.10.2017 and again time was prayed through Raj Kumar for 12.10.2017 after which the petitioner was proceeded exparte. He however admitted filing reply. No other set of circumstances put forth by the petitioner in this case subsequent to 26.9.2017 i.e. date of reply. These circumstances would clearly imply that on 12.10.2017 the petitioner was proceeded exparte due to their wilful absence despite having knowledge of the dates fixed for the proceedings. The Hon'ble High Court of Madhya Pradesh in **Girraj Singh Sikarwar vs. State of M.P.** in **2020 LLR 847** has held in para nos. 11 and 12 as follows:—

> "11. Further, it is well established principle of law that an order cannot be quashed merely on the ground of violation of Principles of Natural Justice, unless and until a prejudice is pointed out by the petitioner. The Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364 has held as under :
>
> "28. The decisions cited above make one thing clear, *viz.*, principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait- jacket. Their applicability depends upon the context and the facts and cir*cum*stances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi- judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable -- a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing applying the test of prejudice, as it may be called -- that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding -- which may result in grave prejudice to public interest. It is for this reason that the rule of post- decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the

following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category -- violation of a facet of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

* * * *

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing"categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, *viz.*, whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is

obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, *viz.*, test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, *i.e.*, between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the cir*cum*stances, the delinquent officer/employee did or did not have a fair hearing and the orders to be

made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, *viz.*, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

"12. The Supreme Court in the case of State Vs. N.S. Gnaneswaran reported in (2013) 3 SCC 594 has held as under :

"12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath Sarangi v. State of Orissa, State of U.P. v.Shatrughan Lal, State of A.P. v. Thakkidiram Reddy and Debotosh Pal Choudhury v. Punjab National Bank.)"

13. Thus, viewed from any angle, it is clear that not only, the petitioner was served, but he also did not participate in the departmental enquiry deliberately. He also did not respond to various letters sent by the department and did not join his service from 11-5-2017 onwards till his services were terminated. Even otherwise, no plausible reason has been given by the petitioner for not joining his services from 11-5-2017 onwards".

18. The petitioner was duly represented by an authorized representative of his choice during enquiry proceedings and also filed the claim in English language thus he cannot claim that enquiry report in English was not understood by him. It is hence clear that in the peculiar circumstances of the enquiry proceedings in the present case though proceedings were carried out by the Inquiry Officer the wilful absence of the petitioner from the enquiry proceedings do not create any vested right in the petitioner for claiming the violation of principle of natural justice if any by Inquiry Officer. In-fact petitioner had suppressed that he did not take part in enquiry proceedings. No other violation of Model Standing Orders or principles of Natural Justice is evident from enquiry report. In these circumstances the enquiry conducted by the Inquiry Officer in the present case was legal and proper hence issue no.1 is decided accordingly.

Relief

19. As a sequel to the above discussion on preliminary issue and on basis of evidence led the enquiry conducted against petitioner is held to be fair and proper.

20. The Hon'ble Supreme Court in **Uttar Pradesh State Road Transport Corporation versus Gajadhar Nath in Civil Appeal No.7536 of 2021 (Arising out of SLP (Civil) No.12369 of 2021)** has held in para no.5 as follows:—

5. The scope of an adjudicator under the Industrial Disputes Act, 19474 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

"32. From those decisions, the following principles broadly emerge :—

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

21. Section 11-A of the Industrial Disputes Act, 1947 as follows:—

"[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]"

22. Going by the procedure as directed by the Hon'ble Supreme Court, this court shall proceed to determine whether punishment awarded by Inquiry Officer was in proportionally to the misconduct alleged in the charge-sheet.

23. Now come up for hearing of both the parties.

Be called after respite.

31.8.2024 Present: Sh. N.L.Kaundal, Ld. AR for the petitioner
Sh. Yatish J.P. Ld. Counsel for respondent

24. Ld. Authorized Representative for the petitioner has submitted that false charges have been framed against the petitioner and enquiry was not in accordance with Model Standing Order. The petitioner was not supplied copies of the documents relied and list of witnesses more undue harsh punishment has been imposed on the petitioner.

25. On the contra learned counsel for the respondent has submitted that the petitioner has wilfully flouted the office order and did not join the duty on his own. This has adversely affected the discipline of the works of company and caused financial loss to company. Thus the punishment of petitioner is commensurate with the misconduct. Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that**:

> "The power under section 11-A imposes *vide* discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

26. It is a settled law that the punishment for misconduct must be in proportionally and reasonably construed *vis-a-vis* the nature of misconduct proved or established. In petitioner's case the termination of petitioner was the slightly disproportionate punishment. When seen in the light of nature of proved misconduct the punishment imposed has wide implications not only on workman/petitioner but also his family members who are wholly dependent on him for their livelihood. Thus this court while exercising the discretion under Section 11-A of the Industrial Disputes Act though upholds the order of termination but respondent company is directed to pay Rs.50,000/- to petitioner by way of compensation within 2 months of this order failing which the amount shall be paid at the rate of 9% per annum interest till realization. Parties are left to bear their costs.

27. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2024.

(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

दिनांक, 11 मार्च, 2025

संख्या वि0स0–विधायन–विधेयक / 1–105 / 2025.––हिमाचल प्रदेश विधान सभा की प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम–140 के अन्तर्गत हिमाचल प्रदेश विनियोग विधेयक, 2025 (2025 का विधेयक संख्यांक 2) जो आज दिनांक 11 मार्च, 2025 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो चुका है, सर्वसाधारण को सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है।

हस्ताक्षरित / –
सचिव,
हि0 प्र0 विधान सभा।

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2025 का विधेयक संख्यांक 2

हिमाचल प्रदेश विनियोग विधेयक, 2025

खण्डों का क्रम

खण्डः

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2025 का विधेयक संख्यांक 2

हिमाचल प्रदेश विनियोग विधेयक, 2025

(विधान सभा में पुरःस्थापित रूप में)

31 मार्च, 2025 को समाप्त होने वाले वित्तीय वर्ष के लिए हिमाचल प्रदेश राज्य की संचित निधि में से सेवाओं के लिए कतिपय और धनराशियों के संदाय को प्राधिकृत करने और उनका विनियोग करने के लिए **विधेयक।**

भारत गणराज्य के छिहत्तरवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :–

1. संक्षिप्त नाम.––इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश विनियोग अधिनियम, 2025 है।

2. हिमाचल प्रदेश राज्य की संचित निधि में से वित्तीय वर्ष 2024–2025 के लिए ₹1,70,53,78,25,925 की और राशि जारी करना.––हिमाचल प्रदेश राज्य की संचित निधि में से अनुसूची के (तृतीय) स्तम्भ में विनिर्दिष्ट से अनधिक धनराशियां, जिनका योग केवल ₹1,70,53,78,25,925 (सत्रह हज़ार

तिरेपन करोड़ अठहत्तर लाख पच्चीस हज़ार नौ सौ पच्चीस रुपये) हैं, संदत्त और उपयोजित की जाएं, जिनका वित्तीय वर्ष 2024–2025 की अवधि में अनुसूची के (द्वितीय) स्तम्भ में विनिर्दिष्ट सेवाओं और प्रयोजनों से सम्बन्धित विभिन्न प्रभारों को चुकाने के लिए उपयोग किया जाएगा।

3. **विनियोग.**––इस अधिनियम द्वारा हिमाचल प्रदेश राज्य की संचित निधि में से संदत्त और उपयोजित किए जाने के लिए प्राधिकृत धनराशियों का इस अधिनियम की धारा 2 के अधीन विनिर्दिष्ट अवधि से सम्बन्धित अनुसूची में अभिव्यक्त सेवाओं और प्रयोजनों के लिए विनियोजन किया जाएगा।

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अनुसूची

(धारा 2 और 3 देखें)

1	2		3		
मांग संख्या	**सेवाएं और प्रयोजन**		**निम्नलिखित राशियों से अनधिक**		
			विधान सभा द्वारा दत्तमत ₹ में	**संचित निधि पर प्रभारित ₹ में**	**कुल ₹ में**
01	विधान सभा	(राजस्व)	6,37,65,811	1,23,60,000	7,61,25,811
		(पूंजीगत)	28,37,05,000	—	28,37,05,000
02	राज्यपाल तथा मन्त्री परिषद्	(राजस्व)	1,52,95,581	—	1,52,95,581
03	न्याय प्रशासन	(राजस्व)	55,26,73,332	7,25,25,553	62,51,98,885
		(पूंजीगत)	31,11,22,000	—	31,11,22,000
04	सामान्य प्रशासन	(राजस्व)	24,45,90,631	7,40,67,935	31,86,58,566
		(पूंजीगत)	50,25,20,000	—	50,25,20,000
05	भू–राजस्व और जिला प्रशासन	(राजस्व)	5,38,03,50,785	—	5,38,03,50,785
		(पूंजीगत)	21,00,00,000	—	21,00,00,000
06	आबकारी और कराधान	(राजस्व)	13,13,70,258	—	13,13,70,258
07	पुलिस और सम्बद्ध संगठन	(राजस्व)	13,000	7,16,09,374	7,16,22,374
		(पूंजीगत)	31,75,45,000	—	31,75,45,000
08	शिक्षा	(राजस्व)	12,000	13,60,22,408	13,60,34,408
		(पूंजीगत)	88,57,91,954	—	88,57,91,954
09	स्वास्थ्य और परिवार कल्याण	(राजस्व)	81,54,00,785	3,46,60,000	85,00,60,785
		(पूंजीगत)	3,92,65,89,444	—	3,92,65,89,444
10	लोक निर्माण–सड़क, पुल तथा भवन	(राजस्व)	—	1,48,97,787	1,48,97,787
		(पूंजीगत)	4,56,11,20,000	—	4,56,11,20,000
11	कृषि	(राजस्व)	33,88,02,000	—	33,88,02,000
		(पूंजीगत)	1,40,00,000	—	1,40,00,000
12	उद्यान	(राजस्व)	23,06,12,000	—	23,06,12,000
		(पूंजीगत)	4,99,98,000	—	4,99,98,000
13	सिंचाई, जलापूर्ति एवं सफाई	(राजस्व)	1,000	1,89,03,699	1,89,04,699
		(पूंजीगत)	1,94,59,31,888	22,87,25,137	2,17,46,57,025

14	पशुपालन, दुग्ध विकास एवं मत्स्य	(राजस्व)	27,67,85,778	—	27,67,85,778
		(पूंजीगत)	13,39,98,000	—	13,39,98,000
16	वन और वन्य जीवन	(राजस्व)	26,13,00,100	1,10,000	26,14,10,100
17	निर्वाचन	(राजस्व)	34,34,01,619	—	34,34,01,619
		(पूंजीगत)	2,00,00,000	—	2,00,00,000
18	उद्योग, खनिज, आपूर्ति और सूचना प्रौद्योगिकी	(राजस्व)	8,93,97,045	3,76,29,574	12,70,26,619
		(पूंजीगत)	80,39,02,000	—	80,39,02,000
19	सामाजिक न्याय एवं अधिकारिता	(राजस्व)	92,45,37,496	56,73,667	93,02,11,163
		(पूंजीगत)	92,48,39,000	—	92,48,39,000
20	ग्रामीण विकास	(राजस्व)	4,21,72,03,977	13,69,857	4,21,85,73,834
21	सहकारिता	(राजस्व)	5,000	—	5,000
22	खाद्य और नागरिक आपूर्ति	(राजस्व)	58,31,07,073	—	58,31,07,073
23	विद्युत विकास	(राजस्व)	6,77,20,42,815	2,01,51,48,346	8,78,71,91,161
		(पूंजीगत)	2,07,22,73,000	—	2,07,22,73,000
25	सड़क और जल परिवहन	(राजस्व)	2,33,72,15,000	—	2,33,72,15,000
		(पूंजीगत)	5,95,07,17,000	—	5,95,07,17,000
26	पर्यटन और नागर विमानन	(राजस्व)	94,10,24,452	23,97,438	94,34,21,890
		(पूंजीगत)	77,71,03,000	—	77,71,03,000
27	श्रम, रोजगार और प्रशिक्षण	(राजस्व)	61,66,07,284	—	61,66,07,284
		(पूंजीगत)	2,41,00,000	—	2,41,00,000
28	शहरी विकास, नगर एवं ग्राम योजना तथा आवास	(राजस्व)	1,16,75,17,756	—	1,16,75,17,756
		(पूंजीगत)	1,31,36,56,000	35,19,965	1,31,71,75,965
29	वित्त	(राजस्व)	7,65,27,30,053	10,95,76,758	7,76,23,06,811
		(पूंजीगत)	1,000	1,01,37,07,15,000	1,01,37,07,16,000
30	विविध सामान्य सेवाएं	(राजस्व)	22,10,42,915	—	22,10,42,915
		(पूंजीगत)	44,98,59,000	—	44,98,59,000
31	जनजातीय क्षेत्र विकास कार्यक्रम	(राजस्व)	1,61,05,61,162	2,54,20,148	1,63,59,81,310
		(पूंजीगत)	9,58,64,000	—	9,58,64,000
32	अनुसूचित जाति विकास कार्यक्रम	(राजस्व)	4,07,97,06,325	—	4,07,97,06,325
		(पूंजीगत)	86,07,84,960	—	86,07,84,960
	जोड़	**(राजस्व)**	**39,86,70,73,033**	**2,63,23,72,544**	**42,49,94,45,577**
		(पूंजीगत)	**26,43,54,20,246**	**1,01,60,29,60,102**	**1,28,03,83,80,348**
		कुल जोड़	**66,30,24,93,279**	**1,04,23,53,32,646**	**1,70,53,78,25,925**

उद्देश्यों और कारणों का कथन

यह विधेयक, भारत के संविधान के अनुच्छेद 205 के साथ पठित अनुच्छेद 204 के खण्ड (1) के अनुसरण में हिमाचल प्रदेश राज्य की संचित निधि में से वित्तीय वर्ष 2024–2025 के लिए हिमाचल प्रदेश

सरकार के अनुमानित व्ययों के सम्बन्ध में संचित निधि पर प्रभारित व्ययों और विधान सभा द्वारा यथा दत्तमत अन्य व्ययों को पूरा करने के लिए अपेक्षित और धन के विनियोजन का उपबंध करने के लिए पुरःस्थापित है।

(सुखविन्द्र सिंह सुक्खू)
मुख्य मन्त्री ।

शिमलाः
तारीखः 11 मार्च, 2025

———————

भारत के संविधान के अनुच्छेद 207 के अधीन राज्यपाल की सिफारिशें

[वित्त विभाग नस्ति संख्याः फिन–ए–सी (6)1 / 2024]

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश विनियोग विधेयक, 2025 की विषय–वस्तु के बारे में सूचित किए जाने के पश्चात्, भारत के संविधान के अनुच्छेद 207 के अधीन उक्त विधेयक को विधान सभा में पुरःस्थापित करने और उस पर विचार करने की सिफारिश करते हैं।

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AUTHORITATIVE ENGLISH TEXT

Bill No. 2 of 2025.

THE HIMACHAL PRADESH APPROPRIATION BILL, 2025

ARRANGEMENT OF CLAUSES

Clauses:

Bill No. 2 of 2025.

THE HIMACHAL PRADESH APPROPRIATION BILL, 2025

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Himachal Pradesh for the services for the financial year ending on 31st day of March, 2025.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventy-sixth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Himachal Pradesh Appropriation Act, 2025.

2. Issue of a further sum of ₹1,70,53,78,25,925 out of the Consolidated Fund of the State of Himachal Pradesh for the financial year 2024-2025.—From and out of the Consolidated Fund of the State of Himachal Pradesh, there may be paid and applied sums not exceeding those specified in column (3) of THE SCHEDULE amounting in the aggregate to a sum of ₹1,70,53,78,25,925 (Rupees seventeen thousand fifty three crore seventy eight lakh twenty five thousand nine hundred twenty five) only towards defraying the several charges which will come in course of payment during the financial year 2024-2025 in respect of the services and purposes specified in column (2) of THE SCHEDULE.

3. Appropriation.—The sums authorized to be paid and applied from and out of the Consolidated Fund of the State of Himachal Pradesh by this Act shall be further appropriated for the services and purposes expressed in THE SCHEDULE in relation to the period specified under section 2 of this Act.

THE SCHEDULE

(*See* sections 2 and 3)

1	2		3		
Demand No.	**Services and purposes**		**Sums not exceeding**		
			Voted by the Legislative Assembly in ₹	Charged on the Consolidated Fund in ₹	Total in ₹
01	Vidhan Sabha	(Revenue)	6,37,65,811	1,23,60,000	7,61,25,811
		(Capital)	28,37,05,000	-	28,37,05,000
02	Governor and Council of Ministers	(Revenue)	1,52,95,581	-	1,52,95,581
1	2		3		
03	Administration of Justice	(Revenue)	55,26,73,332	7,25,25,553	62,51,98,885
		(Capital)	31,11,22,000	-	31,11,22,000

04	General Administration	(Revenue)	24,45,90,631	7,40,67,935	31,86,58,566
		(Capital)	50,25,20,000	-	50,25,20,000
05	Land Revenue and District Administration	(Revenue)	5,38,03,50,785	-	5,38,03,50,785
		(Capital)	21,00,00,000	-	21,00,00,000
06	Excise and Taxation	(Revenue)	13,13,70,258	-	13,13,70,258
07	Police and Allied Organisations	(Revenue)	13,000	7,16,09,374	7,16,22,374
		(Capital)	31,75,45,000	-	31,75,45,000
08	Education	(Revenue)	12,000	13,60,22,408	13,60,34,408
		(Capital)	88,57,91,954	-	88,57,91,954
09	Health and Family Welfare	(Revenue)	81,54,00,785	3,46,60,000	85,00,60,785
		(Capital)	3,92,65,89,444	-	3,92,65,89,444
10	Public Works, Roads, Bridges and Buildings	(Revenue)	-	1,48,97,787	1,48,97,787
		(Capital)	4,56,11,20,000	-	4,56,11,20,000
11	Agriculture	(Revenue)	33,88,02,000	-	33,88,02,000
		(Capital)	1,40,00,000	-	1,40,00,000
12	Horticulture	(Revenue)	23,06,12,000	-	23,06,12,000
		(Capital)	4,99,98,000	-	4,99,98,000
13	Irrigation, Water Supply and Sanitation	(Revenue)	1,000	1,89,03,699	1,89,04,699
		(Capital)	1,94,59,31,888	22,87,25,137	2,17,46,57,025
14	Animal Husbandry, Dairy Development and Fisheries	(Revenue)	27,67,85,778	-	27,67,85,778
		(Capital)	13,39,98,000	-	13,39,98,000
16	Forest and Wild Life	(Revenue)	26,13,00,100	1,10,000	26,14,10,100
17	Election	(Revenue)	34,34,01,619	-	34,34,01,619
		(Capital)	2,00,00,000	-	2,00,00,000
18	Industries, Minerals, Supplies and Information Technology	(Revenue)	8,93,97,045	3,76,29,574	12,70,26,619
		(Capital)	80,39,02,000	-	80,39,02,000
19	Social Justice and Empowerment	(Revenue)	92,45,37,496	56,73,667	93,02,11,163
		(Capital)	92,48,39,000	-	92,48,39,000
20	Rural Development	(Revenue)	4,21,72,03,977	13,69,857	4,21,85,73,834
21	Co-operation	(Revenue)	5,000	-	5,000
22	Food and Civil Supplies	(Revenue)	58,31,07,073	-	58,31,07,073
23	Power Development	(Revenue)	6,77,20,42,815	2,01,51,48,346	8,78,71,91,161
		(Capital)	2,07,22,73,000	-	2,07,22,73,000
25	Road and Water	(Revenue)	2,33,72,15,000	-	2,33,72,15,000

	Transport	(Capital)	5,95,07,17,000	-	5,95,07,17,000
26	Tourism and Civil Aviation	(Revenue)	94,10,24,452	23,97,438	94,34,21,890
		(Capital)	77,71,03,000	-	77,71,03,000
27	Labour, Employment and Training	(Revenue)	61,66,07,284	-	61,66,07,284
		(Capital)	2,41,00,000	-	2,41,00,000
28	Urban Development, Town and Country Planning and Housing	(Revenue)	1,16,75,17,756	-	1,16,75,17,756
		(Capital)	1,31,36,56,000	35,19,965	1,31,71,75,965
29	Finance	(Revenue)	7,65,27,30,053	10,95,76,758	7,76,23,06,811
		(Capital)	1,000	1,01,37,07,15,000	1,01,37,07,16,000
30	Miscellaneous General Services	(Revenue)	22,10,42,915	-	22,10,42,915
		(Capital)	44,98,59,000	-	44,98,59,000
31	Tribal Area Development Programme	(Revenue)	1,61,05,61,162	2,54,20,148	1,63,59,81,310
		(Capital)	9,58,64,000	-	9,58,64,000
32	Scheduled Castes Development Programme	(Revenue)	4,07,97,06,325	-	4,07,97,06,325
		(Capital)	86,07,84,960	-	86,07,84,960
	Total	**(Revenue)**	**39,86,70,73,033**	**2,63,23,72,544**	**42,49,94,45,577**
		(Capital)	**26,43,54,20,246**	**1,01,60,29,60,102**	**1,28,03,83,80,348**
		Grand Total	**66,30,24,93,279**	**1,04,23,53,32,646**	**1,70,53,78,25,925**

STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of clause (1) of article 204 read with article 205 of the Constitution of India to provide for the appropriation from and out of the Consolidated Fund of the State of Himachal Pradesh of the moneys further required to meet the expenditure charged on the Consolidated Fund and other expenditure as voted by the Legislative Assembly in respect of the estimated expenditure of the Government of Himachal Pradesh for the financial year 2024-2025

(SUKHVINDER SINGH SUKHU)
Chief Minister.

SHIMLA:
The 11th March, 2025

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Finance Department File No. Fin-A-C (6)1/2024]

The Governor, Himachal Pradesh, having been informed of the subject matter of the Himachal Pradesh Appropriation Bill, 2025, recommends, under article 207 of the Constitution of India, the introduction in and consideration by the Legislative Assembly of the said Bill.

LAW DEPARTMENT

NOTICE

Shimla-2, the 28th January, 2025

No. LLR-E(9)-1/2025-Leg.—Whereas Sh. Pradeep Kumar Verma, Advocate, s/o Sh. Tej Dass Verma, r/o Village Ayog (Dhar), P.O. Durgapur, Tehsil Sunni, District Shimla, H.P. has applied for appointment of notary in Sub-Division Shimla (R), District Shimla under rule 4 of the Notaries Rules, 1956.

Therefore, the undersigned in exercise of the powers conferred *vide* Government Notification No. LLR-A(2)-1/2014-Legn. Dated 3rd March, 2023, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of fifteen days from the date of publication of this notice in Rajpatra (e-Gazette) H.P. against his appointment as a notary in Sub-Division Shimla (R) of District Shimla.

Sd/-
RAJINDER SINGH TOMAR,
(Competent Authority),
Addl. LR-cum-Addl. Secretary (Law).

CHANGE OF NAME

I, Shivani Mehta *alias* Ravina (26) d/o Sh. Rajinder Kumar Mehta, r/o Village Hardon, P.O. Talwar, Tehsil Jaisinghpur, District Kangra (H.P.) hereby inform that I have changed my name from Shivani Mehta *alias* Ravina to EISHA CHANDEL. All concerned please note and make necessary correction.

SHIVANI MEHTA *alias* RAVINA
d/o Sh. Rajinder Kumar Mehta,
r/o Village Hardon, P.O. Talwar,
Tehsil Jaisinghpur, District Kangra (H.P.).

CHANGE OF NAME

I, Ajudhaya Devi w/o Sh. Ram Parkash Sharma, r/o V.P.O. Kotlu, Tehsil Jaisinghpur, District Kangra (H.P.) hereby inform that I have changed my name from Ajudhaya Devi to Ayodhya Devi. All concerned note and make necessary correction.

AJUDHAYA DEVI
w/o Sh. Ram Parkash Sharma,
r/o V.P.O. Kotlu,
Tehsil Jaisinghpur, District Kangra (H.P.).

CHANGE OF NAME

I, Sarwan Devi w/o Sh. Prem Raj, r/o Village & P.O. Jakha, Tehsil Dodra Kawar, District Shimla (H.P.)-171 221 declare that I have changed my name from Sakhan Devi (Previous Name) to Sarwan Devi (New Name). All concerned please may note.

SARWAN DEVI
w/o Sh. Prem Raj,
r/o Village & P.O. Jakha,
Tehsil Dodra Kawar, District Shimla (H.P.).

CHANGE OF NAME

I, Chandan Lal s/o Sh. Kamlu Ram, r/o Village Chamarla, P.O. Jaon, Tehsil Nirmand, District Kullu (H.P.) declare that my daughter's name Preety in her Aadhar Card is wrongly entered as Priti. That Priti and Preety is one and same person. All concerned please may note.

CHANDAN LAL
s/o Sh. Kamlu Ram,
r/o Village Chamarla, P.O. Jaon,
Tehsil Nirmand, District Kullu (H.P.).

CHANGE OF NAME

I, Darshan Kumar Sooden s/o Sh. Hari Chand Sooden, r/o Indora, Kangra (H.P.) is also known as D.K. Sooden. I hereby declare that both the names are of single person. All concerned may note for all future purpose.

DARSHAN KUMAR SOODEN
s/o Sh. Hari Chand Sooden,
r/o Indora, Kangra (H.P.).

CHANGE OF NAME

I, Neelam d/o Sh. Raj Kumar, declare that in my Aadhar Card No.7457 8879 4510 my name and address is wrongly entered as Zoya Khan c/o Amir 85/5, Chah Khazan Khan ka Kuwa, Rampur city Rampur, Utter Pradesh whereas my correct name is Neelam and correct address is r/o Village Runan Ghoron, Tehsil and District Solan (H.P.). Concerned please note.

NEELAM
d/o Sh. Raj Kumar,
r/o Village Runan Ghoron,
Tehsil and District Solan (H.P.).

CHANGE OF NAME

I, Asha Devi (New Name) w/o Shri Harmesh Ghai, aged about 74 years r/o Near Govt. Sr. Sec. School, House No. 1, Ground Floor, Lal Pani, Shimla Pin-171001 declare that I have changed my name from Asha Ghai (Previous Name) to Asha Devi (New Name) all concerned please may notice.

ASHA DEVI
w/o Shri Harmesh Ghai,
r/o Near Govt. Sr. Sec. School,
House No. 1, Ground Floor,
Lal Pani, Shimla Pin-171001.

CHANGE OF NAME

I, Seema w/o Kishori Lal, r/o Village Amentha, P.O. Gehra, Tehsil & District Chamba (H.P.) declare that my name Soma Devi is wrongly entered in my Aadhar No. 4719 5856 3234. Correct name is Seema. Please note.

SEEMA
w/o Kishori Lal
r/o Village Amentha, P.O. Gehra,
Tehsil & District Chamba (H.P.).

ब अदालत श्री अनिल शर्मा, तहसीलदार / कार्यकारी दण्डाधिकारी, तहसील ननखरी,
जिला शिमला, हिमाचल प्रदेश

प्रदीपना पुत्री स्व0 श्री दीना नाथ, गांव भंडराल, चक थाना, तहसील ननखरी हालावाद पत्नी श्री जवहार लाल, गांव डोई, डा0 बडाच, तहसील रामपुर, जिला शिमला, हिमाचल प्रदेश ..... प्रार्थिया।

बनाम

आम जनता

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत ग्राम पंचायत थाना ननखरी के जन्म एवं मृत्यु पंजीकरण रजिस्टर में जन्म तिथि पंजीकृत करने बारा।

निवेदिका प्रदीपना पुत्री स्व0 श्री दीना नाथ, डा0 व गांव भंडराल, चक थाना, तहसील ननखरी हालावाद पत्नी श्री जवहार लाल, गांव डोई, डा0 बडाच, तहसील रामपुर, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में एक दरख्वास्त पेश कर गुजारिश की है कि प्रार्थिया की जन्म तिथि 14–08–1980 ग्राम पंचायत में सही व दुरुस्त है। इसलिए मैं ग्राम पंचायत थाना ननखरी के जन्म एवं मृत्यु पंजीकरण रजिस्टर में जन्म तिथि 14–08–1980 दर्ज करवाना चाहती हूं। आवेदिका ने शपथ–पत्र व अप्राप्यता प्रमाण–पत्र संलग्न कर अनुरोध किया है कि मेरी जन्म तिथि ग्राम पंचायत थाना ननखरी में पंजीकृत की जावे।

अतः इस इश्तहार द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त जन्म के पंजीकरण से सम्बंधित ग्राम पंचायत थाना ननखरी के रिकार्ड में दर्ज करने बारा कोई एतराज हो तो दिनांक 14–03–2025 को सुबह 10.00 बजे असालतन / वकालतन हाजिर होकर लिखित व मौखिक एतराज पेश करें। अन्यथा उजर / एतराज पेश न होने की सूरत में यह समझा जायेगा कि उक्त जन्म के पंजीकरण बारे किसी को कोई एतराज नहीं है तथा सम्बन्धित सचिव, ग्राम पंचायत थाना ननखरी को जन्म तिथि पंजीकरण करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 14–02–2025 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

हस्ताक्षरित / –

मोहर। (अनिल शर्मा),

तहसीलदार / कार्यकारी दण्डाधिकारी,

तहसील ननखरी, जिला शिमला (हि0प्र0)।

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ब अदालत श्री अनिल शर्मा, तहसीलदार / कार्यकारी दण्डाधिकारी, तहसील ननखरी, जिला शिमला, हिमाचल प्रदेश

श्रीमती सरोजनी देवी पत्नी श्री बीटु, ग्राम टूटू, डा0 देलठ, तहसील ननखरी जिला शिमला, हि0प्र0

.. प्रार्थिया।

बनाम

आम जनता

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत ग्राम पंचायत देलठ, तहसील ननखरी, जिला शिमला, हि0प्र0 के जन्म एवं मृत्यु पंजीकरण रजिस्टर में जन्म तिथि पंजीकृत करने बारा।

श्रीमती सरोजनी देवी पत्नी श्री बीटु, ग्राम टूटू, डा0 देलट, तहसील ननखरी, जिला शिमला, हि0प्र0 ने इस अदालत में एक दरख्वास्त पेश की है कि मेरी पुत्री प्रीति की जन्म तिथि 05–05–2008 सही व दुरुस्त है तथा आधार में 27–04–2008 है जोकि गलत दर्ज है मैं अपनी पुत्री प्रीति का नाम व जन्म तिथि 05–05–2008, ग्राम पंचायत देलठ, तहसील ननखरी के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज करवाना चाहती हूं, आवेदिका ने शपथ–पत्र व अप्राप्यता प्रमाण–पत्र व बेटी का दसवीं कक्षा का प्रमाण–पत्र संलग्न कर

अनुरोध किया है कि मेरी पुत्री प्रीति का नाम व जन्म तिथि 05–05–2008 ग्राम पंचायत देलठ, तहसील ननखरी के जन्म व मृत्यु पंजीकरण रजिस्टर में पंजीकृत किया जावे।

अतः इस इश्तहार द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त जन्म के पंजीकरण से सम्बंधित ग्राम पंचायत देलठ, तहसील ननखरी के रिकार्ड में दर्ज करने बारा कोई एतराज हो तो दिनांक 15–03–2025 को सुबह 10.00 बजे असालतन / वकालतन हाजिर होकर लिखित व मौखिक एतराज पेश करें अन्यथा उजर / एतराज पेश न होने की सूरत में यह समझा जायेगा कि उक्त जन्म के पंजीकरण बारे किसी को कोई एतराज नहीं है तथा सम्बन्धित सचिव, ग्राम पंचायत देलठ, तहसील ननखरी को जन्म तिथि पंजीकरण करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 15–02–2025 को मेरे हस्ताक्षर व मोहर सहित अदालत जारी हुआ।

हस्ताक्षरित / –

मोहर। (अनिल शर्मा),

तहसीलदार / कार्यकारी दण्डाधिकारी,

तहसील ननखरी, जिला शिमला (हि0प्र0)।

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ब अदालत श्री अनमोल शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, तकलेच, उप–तहसील तकलेच, जिला शिमला (हि0प्र0)

नं0 मुकद्दमा : 18 / 13–B/2023 तारीख दायर : 27–06–2023

श्री राम कृष्ण व गोपी चन्द पुत्रगण स्व0 श्री ईश्वर दास, निवासीगण गांव व डाकघर दरकाली, उप–तहसील तकलेच, जिला शिमला (हि0प्र0) .. वादी।

बनाम

आम जनता .. प्रतिवादी।

नोटिस बनाम आम जनता।

हरगाह आम को सूचित किया जाता है कि श्री राम कृष्ण व गोपी चन्द पुत्रगण स्व0 श्री ईश्वर दास, निवासीगण गांव व डाकघर दरकाली, उप–तहसील तकलेच, जिला शिमला (हि0प्र0) ने इस आशय के साथ प्रस्तुत की है कि प्रार्थीगण का सगा भाई राई दास पुत्र स्व0 श्री ईश्वर दास, निवासी गांव व डाकघर दरकाली, उप–तहसील तकलेच, जिला शिमला (हि0प्र0) का इंतकाल–उल–खबरी दर्ज करने हेतु प्रार्थना–पत्र गुजार रखा है। वादीगण का भाई श्री राई दास जो 45–50 वर्षों से लापता है। लापता होने के करीब 50 साल का अरसा हो गया है। आज तक उनका कोई पता न चला है और न ही कोई चिट्ठी पत्र आई है, न ही किसी ने उनको देखा है। इस बारे पटवारी पटवार वृत्त बहाली रिपोर्ट व शपथ–पत्र साथ संलग्न किया है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को कोई उजर / एतराज हो तो असालतन व वकालतन मिति 20–03–2025 को या इससे पूर्व अदालत हज़ा में हाज़िर आकर अपनी आपत्ति दर्ज़ करवा सकता है। बाद गुजरने मियाद कोई भी उजर / एतराज काबिले समायत न होगा।

आज दिनांक 19–03–2025 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –

सहायक समाहर्ता द्वितीय श्रेणी,

उप–तहसील तकलेच, जिला शिमला (हि0प्र0)।

ब अदालत श्रीमती तन्जिन डोलमा, सहायक समाहर्ता द्वितीय वर्ग, कुमारसैन, तहसील कुमारसैन, जिला शिमला (हि0प्र0)

मिसल नं0 : 01 / 2025 तारीख संस्थापन : 09–01–2025 तारीख फैसला :

श्रीमती पूनम पत्नी स्व0 श्री वेदप्रकाश, गांव हथिया, डा0 कांगल, तहसील कुमारसैन, जिला शिमला (हि0 प्र0) ... प्रार्थिया।

बनाम

आम जनता ... प्रत्यार्थी।

भू–राजस्व अधिनियम, 1954 की धारा 37(1) के तहत राजस्व कागजात में नाम दुरुस्ती बारे दरख्वास्त।

श्रीमती पूनम पत्नी स्व0 श्री वेदप्रकाश, गांव हथिया, डा0 कांगल, तहसील कुमारसैन, जिला शिमला (हि0 प्र0) ने अदालत हजा में प्रार्थना–पत्र मय नकल जमाबन्दी साल 2020–2021, नकल परिवार रजिस्टर, प्रतिलिपि आधार कार्ड, राशन कार्ड, विद्यालय प्रमाण–पत्र तथा शपथ–पत्र सहित गुजार कर निवेदन किया है कि पटवार वृत्त कांगल (मोहाल हथिया) के राजस्व रिकार्ड में अराजी खाता / खतौनी नं0 16 / 28 में उसके पति का नाम निटू पुत्र स्व0 श्री निकाराम गलत दर्ज है, जबकि प्रार्थिया के मुताबिक उसके पति का नाम प्रस्तुत करवाए गए सबूतों के अनुरूप वेद प्रकाश दर्ज है।

इस बाबत क्षेत्रीय अभिकरण से छानबीन करवाई गई मुताबिक रिपोर्ट क्षेत्रीय कानूनगो, आवेदक का नाम पटवार वृत्त कांगल, मोहाल हथिया के राजस्व रिकार्ड में निटू पुत्र स्व0 श्री निकाराम दर्ज है।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि प्रार्थी का नाम पटवार वृत्त कांगल (मोहाल हथिया) के राजस्व सम्पदा के अराजी खाता / खतौनी नं0 16 / 28 में निटू पुत्र स्व0 श्री निकाराम के स्थान पर निटू उर्फ वेदप्रकाश पुत्र स्व0 श्री निकाराम दर्ज करवाने बारे किसी को कोई उजर / एतराज हो तो वह मिति 20–03–2025 को प्रातः 11.00 तक अथवा इस तिथि से पूर्व किसी कार्य दिवस में असालतन / वकालतन हाजिर आकर अपना एतराज दर्ज करवा सकता है। अन्यथा इस तिथि तक कोई भी एतराज पेश न होने की सूरत में प्रार्थी का नाम कागजात माल में दुरुस्त करने के आदेश पारित कर दिए जावेंगे।

यह आदेश आज दिनांक 19–02–2025 को मेरे हस्ताक्षर व मोहर सहित जारी हुए।

मोहर। हस्ताक्षरित / –
(तन्जिन डोलमा),
सहायक समाहर्ता द्वितीय वर्ग,
कुमारसैन, तहसील कुमारसैन, जिला शिमला (हि0प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

मुकद्दमा सं0 : 09 / 2024 तारीख दायर : 04–12–2024 किस्म मुकद्दमा : दुरुस्ती इन्द्राज

मुकद्दमा शीर्षक : श्री अंशुल कुमार पुत्र स्व0 श्री प्रेम सिंह, निवासी गांव घटोल, डाकघर बडावली, तहसील रामपुर, जिला शिमला, हिमाचल प्रदेश ... वादी।

बनाम

आम जनता .. प्रतिवादी।

विषय.––राजस्व माल कागजात में हि0प्र0 भू–राजस्व अधिनियम, 1954 की जेर धारा 37 के तहत दुरुस्त इन्द्राज बारे।

श्री अंशुल कुमार पुत्र स्व0 श्री प्रेम सिंह, निवासी गांव घटोल, डाकघर बडावली, तहसील रामपुर, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में आवेदन पत्र प्रस्तुत कर निवेदन किया है कि वादी का नाम राजस्व माल कागजात मौजा मसारना करेरी में काकू पुत्र प्रेम सिंह पुत्र कमला नन्द दर्ज है जोकि गलत दर्ज हुआ है, वादी का वास्तविक नाम आधार कार्ड, राशन कार्ड, ड्राईविंग लाइसैंस एवं स्कूल प्रमाण–पत्र के अनुसार अंशुल कुमार पुत्र प्रेम सिंह पुत्र कमला नन्द है। वादी राजस्व कागजात मौजा मसारना करेरी व राजपुरा में अपना नाम काकू पुत्र प्रेम सिंह पुत्र कमला नन्द के स्थान पर अंशुल कुमार पुत्र प्रेम सिंह पुत्र कमला नन्द दुरुस्त करना चाहता है।

उपरोक्त तथ्यों की मौका छानबीन क्षेत्रीय कानूनगो रामपुर से की गई। मुताबिक मौका छानबीन क्षेत्रीय इकाइयों से पाया कि मौजा मसारना करेरी खाता नं0 6, 7, 8 में सायल मालिक अराजी दर्ज है इसके अलावा सायल के नाम मुहाल राजपुरा खाता 1, 2 में भी अराजी है। मालकागजात में सायल का नाम काकू दर्ज है। सायल का नाम माल कागजात मौजा मसारना करेरी व राजपुरा में काकू पुत्र प्रेम सिंह पुत्र कमलानंद के स्थान पर अंशुल कुमार पुत्र प्रेम सिंह पुत्र कमलानंद दुरुस्त किया जाना वाजिब है।

अतः इस इश्तहार द्वारा सर्वसाधारण व सम्बन्धित रिश्तेदारों को यदि वादी का नाम राजस्व कागजात मौजा मसारना करेरी व राजपुरा में वादी का नाम राजस्व कागजात मौजा काकू पुत्र प्रेम सिंह पुत्र कमलानंद के स्थान पर अंशुल कुमार पुत्र प्रेम सिंह पुत्र कमलानंद दुरुस्त करने बारे किसी भी व्यक्ति, सगे सम्बन्धी को कोई भी उजर / एतराज हो तो वह इश्तहार प्रकाशन के एक माह के भीतर अदालत हजा में असालतन / वकालतन हाजिर होकर अपना उजर / एतराज प्रस्तुत कर सकता है। इसके उपरान्त कोई भी उजर / एतराज काबिले समायत न होगा तथा नियमानुसार नाम दुरुस्ती करने बारे आदेश पारित कर दिये जाएंगे।

अतः इश्तहार मेरे हस्ताक्षर व मोहर अदालत हजा से आज दिनांक 17–02–2025 को जारी हुआ।

मोहर। हस्ताक्षरित / –,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, रामपुर, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

मुकद्दमा सं0 : 06 / 2024 तारीख दायर : 29–10–2024 किस्म मुकद्दमा : दुरुस्ती इन्द्राज

मुकद्दमा शीर्षक : श्री शंकर कुमार पुत्र स्व0 श्री भोला सिंह, निवासी गांव रतनपुर, डाकघर करतोट, तहसील रामपुर, जिला शिमला, हिमाचल प्रदेश .. वादी।

बनाम

आम जनता .. प्रतिवादी।

विषय.––राजस्व माल कागजात में हि0प्र0 भू–राजस्व अधिनियम, 1954 की जेर धारा 37 के तहत दुरुस्त इन्द्राज बारे।

श्री शंकर कुमार पुत्र स्व0 श्री भोला सिंह, निवासी गांव रतनपुर, डाकघर करतोट, तहसील रामपुर, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में आवेदन पत्र प्रस्तुत कर निवेदन किया है कि वादी का नाम राजस्व मालकागजात मौजा कोशगार एवं सनारसा में राकेश पुत्र भोला सिंह दर्ज है जोकि गलत दर्ज हुआ है। वादी का वास्तविक नाम मुताबिक नकल परिवार रजिस्टर, बोनाफाईड हिमाचली, स्कूल प्रमाण–पत्र एवं शपथ–पत्र के अनुसार शंकर कुमार पुत्र भोला सिंह है। वादी राजस्व कागजात मौजा कोशगार एवं सनारसा में राकेश पुत्र भोला सिंह के स्थान पर शंकर कुमार पुत्र भोला सिंह दुरुस्त करना चाहता है।

उपरोक्त तथ्यों की मौका छानबीन क्षेत्रीय कानूनगो रामपुर से की गई। मुताबिक मौका छानबीन क्षेत्रीय इकाइयों से पाया कि जमाबंदी वर्ष 2019–2020 चक सनारसा द्वारा यह पाया गया कि सायल का नाम शंकर कुमार पुत्र भोला सिंह दर्ज है। इस संदर्भ में मौके पर हाजिर बाशिंदगान देह के ब्यानात पाया कि सायल का असल नाम शंकर कुमार है, जोकि माल कागजात में गलत दर्ज है। सायल का नाम राकेश के स्थान पर शंकर कुमार पुत्र पोपू उपनाम भोलू पुत्र धर्म दास माल कागजात में दुरुस्त किया जाना वाजिब है।

अतः इस इश्तहार द्वारा सर्वसाधारण व सम्बन्धित रिश्तेदारों को यदि वादी का नाम राजस्व कागजात मौजा कोशगार एवं सनारसा में राकेश पुत्र भोला सिंह के स्थान पर शंकर कुमार पुत्र भोला सिंह दुरुस्त करने बारे किसी भी व्यक्ति सगे सम्बन्धी को कोई भी उजर / एतराज हो तो वह इश्तहार प्रकाशन के एक माह के भीतर अदालत हजा में असालतन / वकालतन हाजिर होकर अपना उजर / एतराज प्रस्तुत कर सकता है। इसके उपरान्त कोई भी उजर / एतराज काबिले समायत न होगा तथा नियमानुसार नाम दुरुस्ती करने बारे आदेश पारित कर दिये जाएंगे।

अतः इश्तहार मेरे हस्ताक्षर व मोहर अदालत हजा से आज दिनांक 17–02–2025 को जारी हुआ।

मोहर। हस्ताक्षरित / –,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

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In the Court of Ms. Kavita Thakur, Sub-Divisional Magistrate, Shimla (R), District Shimla (H.P.)

Sh. Pawan s/o Sh. Tula Ram, Village & Post Office Rajhana, Tehsil & District Shimla, H.P.

Versus

General Public . . *Respondent.*

Whereas, Sh. Pawan s/o Sh. Tula Ram, Village & Post Office Rajhana, Tehsil & District Shimla, H.P. filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of his/her son Master Lalit Oli as 31-01-2019 in the record of Registrar, Birth and Death, in Gram Panchayat Rajhana, Shimla, H.P.

Sl. No.	Name of the family members	Relation	Date of Birth
1.	Lalit Oli	Son	31-01-2019

Hence, this proclamation is issued to the general public with directions that if any one has objection/claim regarding entry of the name & date of birth of above named person in the record of Registrar, Birth & Death in Gram Panchayat Rajhana, Shimla, H.P. he/she may file their claims/objections in the court on or before one month of publication of this notice in Govt. Gazette, failing which necessary orders will be passed.

Issued today on 11-03-2025 under my signature and seal of the court.

Seal. Sd/-

Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

In the Court of Ms. Kavita Thakur, Sub-Divisional Magistrate, Shimla (R), District Shimla (H.P.)

Smt. Meena d/o Lt. Sh. Kirpa Ram, r/o Village Farnewat, P.O. Reog, Tehsil Sunni, District Shimla, H.P.

Versus

General Public . . *Respondent.*

Whereas, Smt. Meena d/o Lt. Sh. Kirpa Ram, r/o Village Farnewat, P.O. Reog, Tehsil Sunni, District Shimla, H.P. filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of her self Smt. Meena as 17-10-1969 in the record of Registrar, Birth and Death, in Gram Panchayat Reog, Shimla, H.P.

Sl. No.	Name of the family members	Relation	Date of Birth
1.	Meena	Self	17-10-1969

Hence, this proclamation is issued to the general public with directions that if any one has objection/claim regarding entry of the name & date of birth of above named person in the record of Registrar, Birth & Death in Gram Panchayat Reog, Shimla, H.P. he/she may file their claims/ objections in the court on or before one month of publication of this notice in Govt. Gazette, failing which necessary orders will be passed.

Issued today on 10-03-2025 under my signature and seal of the court.

Seal. Sd/-

Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।